

POLITICAL ACCOMMODATION AND THE IDEOLOGY OF THE “MODEL MINORITY”: BUILDING A BRIDGE TO WHITE MINORITY RULE IN THE 21ST CENTURY

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PROLOGUE

Recently, I overheard my father suddenly ask my eight year old son, Alan, whether he wanted to see his grandpa's war medals. I was surprised to hear him ask Alan this question since I never remembered him asking me when I was a child whether I had wanted to see them.

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Finally, thanks go to my family: my wife Jane, my mother Kazu, and my dad Takeru for their inspiration and encouragement to continue fighting for equity and justice; to the Japanese-American community who survived and prevailed over our collective incarceration; and to the many activists, lawyers, and community people of all colors who struggled to make redress a reality.

My father had always seemed reluctant to talk about his war experiences. He was never anxious to go to his 442nd army unit reunions, remarking that he didn't "like all the patriotic crap that went along with them." He kept in sporadic touch with only one army buddy—the sole survivor, besides my father, of an ill-fated patrol in the forests of Italy. They exchanged Christmas cards for 50 years, and visited each other only occasionally. In fact, my sister and I never met him. But when his friend died only a few months ago, he and my mother immediately made travel plans to grieve with his widow.

Shortly after that was when my father took Alan into his bedroom and brought out the box of medals containing his Purple Heart and Bronze Star and all the other colorful bars and clusters he had won. Alan pinned some on, asked about others, and played with them in the same way he often played with shells, coins, or figurines by lining them up, comparing them, ranking them in order of which he liked best. When he asked about the significance of one or the other, my father would try earnestly to give explanations. I'm not sure whether Alan understood them completely.

As I listened to the interchange, I tried to remember whether my father ever shared his wartime experiences with me as he did that afternoon with Alan. I drew a blank. I did remember, however, that when I reached draft age in the sixties my father and mother encouraged me to protest the Vietnam War. I recalled that when I had just entered high school my father took me and my sister to Washington, D.C., in 1963 to be in the Big March. I thought back to the cold early dawns when he and the entire family would board the morning buses to Washington to participate in the national anti-war rallies.

I remembered how he had packed me off to Brooklyn—Oceanhill Brownsville and Bedford Stuyvesant—to work with the African-American communities there during the struggle over community control of schools. He was one of the first to volunteer to work with the fledgling Asian Community Center twenty-five years ago.

As I reflected, it dawned upon me that he had shown me his medals all along. I had been taught what he had learned from his wartime experiences, in the same way that my mother had taught me about what she had learned from her camp experiences by her lifetime of organizing against anti-Asian violence, for workers' and immigrants' rights, and the empowerment of women, people of color, and the

poor. They both understood that the responsibility of being oppressed is first to survive and then to resist. They both realized that in each battle fought against subordination, one earned a citation in the larger struggle for dignity and equality. These are the medals I was shown as a child. These are the mementoes I keep pinned close to my heart. These are the medals I hope to pass on to Alan and his younger brother, Christopher.

Alan finally took one of my father's old medals and placed it in his treasure collection of cards, figurines, old pennies, and found objects. My father put the remainders back into the box, and returned it to the bottom of his bedroom bureau drawer. Nothing more has been spoken of it since that afternoon.

The rest is up to me.

INTRODUCTION

A few years ago when they had reached their seventies, my parents, like other Nisei, received \$20,000 from the United States in payment for their incarceration during World War II.¹ Needless to say, I have no personal problem with the concept of their receiving individual monetary reparations. Indeed, the amount given to them was very little recompense for the fear, time, humiliation, and material loss that relocation wreaked upon them, their families, and community.² It was little solace for the Purple Heart my father received in Italy, or for the friends he lost in the battlefields and dirt roads of Europe fighting for a nation that had locked away their families. The money was both

1. On August 10, 1988, President Reagan signed the Civil Liberties Act of 1988, Pub. L. No. 100-383, 102 Stat. 903 (codified at 50 U.S.C. § 1989 app. (1988)).

2. On February 19, 1942, President Roosevelt signed Executive Order 9066, which, in effect, excluded all persons of Japanese ancestry from residing on the West Coast of the United States. The vast majority of those interned were Issei and Nisei. My parents are "Nisei"—American born Japanese-Americans. My grandparents are "Issei," the immigrant generation. My generation is the third, "Sansei." There were also "Kibei," who were American born but were sent overseas for education.

Although I am aware of the implications and power of terminology, I purposefully use certain terms loosely and interchangeably. For example, I refer to the camps as "internment camps," "relocation camps," "relocation centers," or "concentration camps." I refer to the extraordinary movement to redress the camp experience as "redress," and sometimes I refer to the money damages as "reparations" even though I know that some might consider the term "reparations" as implying that money damages paid to American citizens for constitutional violations are equivalent to money paid to non-Americans as wartime reparations. I use the words interchangeably simply because to me they signify the same things—camp = prison and redress/reparations = justice.

deserved and small compensation for an outrage motivated by racial hysteria and fueled by a history of racial paranoia.

The source of my discomfort is more long range. As one African-American scholar described her ambivalent reaction to the news of Japanese-American reparations:

The apology was so appropriate and the payment so justified, however insufficient it was, that the source of my ambivalent reaction was at first difficult to identify. After some introspection, I guiltily discovered that my sentiments were related to a very dark, brooding feeling that I had fought long and hard to conquer—inferiority. A feeling that took first root in the soil of “Why them and not me?” . . .³

Indeed, there has been a long history of attempts by African-Americans to attain redress not only for slavery, but also for its effects.⁴ However, there has been little Congressional support. On November 20, 1989, Congressman John Conyers introduced H.R. 3745 calling for a commission to examine the institution of slavery and de jure and de facto discrimination against African-Americans.⁵ While it

3. Vincene Verdun, *If the Shoe Fits, Wear It: An Analysis of Reparations to African Americans*, 67 TUL. L. REV. 597, 647 (1993).

4. See *id.* at 600-607. Professor Verdun chronicles the various attempts at reparations for African-Americans from the end of the Civil War, to the Black Manifesto in the 1960s demanding \$500 million dollars from churches and synagogues, to the claims for land and reparations by those such as the Nation of Islam and Queen Mother Moore, to the National Coalition of Blacks for Reparations as well as bills relating to reparations introduced in Congress and in state legislatures. See *id.* See also Rhonda V. Magee, *The Master's Tools from the Bottom Up: Responses to African-American Reparations Theory in Mainstream and Outsider Remedies Discourse*, 79 VA. L. REV. 863, 876-92 (1993) (reviewing the history of the attempts for reparations for African-Americans); BORIS BITTIKER, *THE CASE FOR BLACK REPARATIONS* (1973) (reviewing the potential legal theories for and obstacles to reparations for African-Americans).

In 1995, the Florida state legislature awarded \$150,000 to each of nine survivors, as well as other monetary awards to 143 descendants, of a black community in Rosewood, Florida, burned down by a rioting white mob in 1923. See Lori S. Robinson, *Righting a Wrong Among Black Americans, the Debate Is Escalating over Whether an Apology for Slavery Is Enough*, SEATTLE POST-INTELLIGENCER, June 29, 1997, at E1.

5. H.R. 3745 reads in relevant part:

A bill to acknowledge the fundamental injustice; cruelty, brutality and inhumanity of slavery in the United States and the Thirteen American Colonies between 1619 and 1685 and to establish a commission to examine the institution of slavery, subsequent de jure and de facto racial and economic discrimination against African-Americans, and the impact of these forces on living African Americans, to make recommendations to the Congress on appropriate remedies, and for other purposes. . . .

H.R. 3745, 101st Congress (1989).

continues to languish in congressional committee purgatory, Conyers has unsuccessfully renewed his bill in every Congress since 1989.⁶

Even the simple notion of a national apology for slavery has raised much controversy. On June 12, 1997, Congressman Tony Hall introduced a House Resolution calling for an apology to those who suffered as slaves under the Constitution and laws of the United States.⁷ The response was quick, and overwhelmingly negative. A national poll found that 61% of the people polled disfavored a Congressional apology for slavery, even as blacks favored the apology by a 2-1 margin.⁸ Even Congressman Hall, the sponsor of the resolution was "stunned" at the amount and level of criticism of his proposal.⁹ Perhaps what was most striking about the reaction to the apology proposal was the immediate dismissal by Congress and the President of any consideration of black reparations.¹⁰ Even during the debate

6. In 1991, Conyers enlisted 19 other Representatives as co-sponsors of the bill, H.R. 1684. 137 CONG. REC. H2134-01 (1991). See Scott Shepard, *Slavery Apology Plan Raises Reparations Issue*, ATLANTA CONST., June 17, 1997, at A6 (stating that Conyers has reintroduced his commission legislation in every session of Congress since 1989); Lori S. Robinson, *supra* note 4; Jill Zuckerman & Brian McGrory, *Talk of Apologizing for Slavery Sparks Debate on Efficacy*, BOSTON GLOBE, June 17, 1997, at A1.

7. H.R.Res. 96, 105th Congress (1997).

8. See Paul Leavitt & Robert Silvers, *Poll: Congress Shouldn't Make Apology for Slavery*, USA TODAY, July 2, 1997, at A5 (citing a USA TODAY/CNN/Gallup poll). The math indicates that if blacks polled were approximately 66% in favor, then the percentage of whites disfavoring an apology must have been significantly higher than 61%.

9. See Michael A. Fletcher, *For Americans, Nothing Is Simple About Making Apology for Slavery; Congressman's Suggestion Draws Fire from All Sides*, WASHINGTON POST, Aug. 5, 1997, at A1. The article reports that Hall concedes his idea is "virtually dead" and that he has received hundreds of letters and phone messages "mostly condemning his idea, often with harsh racial language." Indeed, the negative messages have ranged from sentiments such as apologies were in order for those who were stripped of their slaves to thanks should be given to the slave traders who "rescued" slaves from Africa. Hall is quoted as stating that "[t]he reaction has stunned me. . . ." The conservative Congressional reaction was predictably negative with Speaker of the House Gingrich dismissing the measure as "emotional symbolism." Scott Shepard, *Slavery Apology Plan Raises Reparations Issue*, ATLANTA CONST., June 12, 1997, at A6.

10. See Shepard, *supra* note 9 ("Congressional leaders are cool to the notion that the federal government should formally apologize for slavery, perhaps because such an apology would open the door to discussion of monetary reparations for descendants of slaves."). President Clinton rejected the idea of a national apology for slavery with press speculation that his rejection was fueled by his concern about the reparations issue. See *Clinton: No Apology for Slavery*, SALT LAKE TRIB., Aug. 6, 1997, at A4 (reporting that aides privately stated that the White House was concerned about reparations). See also Zuckerman & McGrory, *supra* note 7 (reporting that Clinton "did not think the federal government should pay reparations to the descendants of slaves").

Significantly, the congressional supporters of redress assured the Congress that the redress bill would "not open the door for claims by descendants of former slaves or the descendants of Native American victims of the Federal Government's 19th century policies with respect to American Indians," since payments were not to be made to heirs or descendants of internees

about Japanese-American redress, opponents of the redress bill warned of the possibility that its passage would set a precedent for reparations to other groups.¹¹ It is no wonder that other people of color, particularly African-Americans, who support reparations to Japanese-Americans also simultaneously feel vaguely unsettled about it.

Moreover, the sentiment that there is something disquieting about Congress granting redress to Japanese-Americans, but refusing even to consider the issue with respect to another deserving group, has not been lost on Asian American legal scholars. In his incisive article, *Friend, or Foe or Something Else: Social Meanings of Redress and Reparations*, Professor Eric Yamamoto articulated the dangers of Japanese-American reparations in a larger context.¹² In a fundamental sense, since reparations do not change the "fundamental realities of power," he wrote, it may become a means by which "illusions of change" are fostered thereby perpetuating the political structures that gave rise to the original injuries.¹³ Indeed, he surmised that the support of reparations by a Reagan-Bush Administration could have been explained by its desire to bolster its image among moderate voters. It helped strengthen the appearance internationally that the United States was a country committed to human rights. Finally, it allowed the Republican Administration to point to a "model minority" group to defend its conservative racial policies.¹⁴ Indeed, Yamamoto speculated that a pending class action lawsuit concerning the

under the redress bill. See 134 CONG. REC. S4271 (daily ed. Apr. 19, 1988) (statement of Sen. Matsunaga).

11. Senator Wallop of Wyoming offered an amendment that no funds would be appropriated for Japanese-Americans until the Cherokee Nation was compensated for the Trail of Tears, 134 Cong. Rec. S4393 (April 20, 1988); Senator Helms of North Carolina offered an amendment to bar any territorial claims of Mexico, Native Americans or any other nation as compensation for any claim, *id.* at S4394. Given the probability that any reparations bill for Native Americans—America's first internees—would neither be forthcoming nor successful, this opposition to Japanese-American redress on the basis of a preeminent Native American redress strikes a cynical chord. In fact, in a touch of even greater cynicism, Senator Jesse Helms, a longtime opponent of civil rights legislation, voiced his opposition to Japanese-American redress in part because of the possibility of its rationale being extended to African-American victims of Jim Crow education policies. *Id.* at S4411. See also remarks of Senator Chafee about the possible precedent in terms of reparations to Native Americans and Blacks, *id.* at S4335; statement of Congressman Davis that it is unfair to first compensate Japanese-Americans when there were many other injustices done to other groups that should be compensated first, 134 Cong. Rec. H6314 (Aug. 8, 1988).

12. Eric K. Yamamoto, *Friend, or Foe or Something Else: Social Meanings of Redress and Reparations*, 20 DENV. J. INT'L L. & POL'Y 223 (1992).

13. *Id.* at 231-32, 240-41.

14. *Id.* at 213.

internment, *Hohri v. United States*,¹⁵ threatened the possibility of a

15. *Hohri v. United States*, 586 F. Supp. 769 (D.D.C. 1984), *aff'd in part rev'd in part*, 782 F.2d 227 (1986), *vacated* 482 U.S. 64 (1987), *on remand*, 847 F.2d 779 (1988), *cert. denied*, 488 U.S. 925 (1988).

Hohri ultimately turned on the issue of whether the six year statute of limitations had run on the plaintiffs' constitutional takings claim. 847 F.2d at 779. In *Korematsu v. United States* and *Hirabayashi v. United States*, both challenges to the internment, the Supreme Court had held that the internment was constitutional based upon the government's allegations of military necessity. 782 F.2d at 232-33. For a review of *Korematsu* and *Hirabayashi* cases, see *infra* note 31.

The *Hohri* plaintiffs, representing a class of former internees, argued that the government had purposely and fraudulently concealed evidence from the Supreme Court during the *Korematsu* and *Hirabayashi* cases that indicated there was no military necessity for the internment, and that the six year statute had therefore been tolled. *Id.* The district court, while not contradicting the assertion that the government had fraudulently concealed information from the Supreme Court, nevertheless concluded that the concealed information had been available to the plaintiffs as early as the "late 1940s" and held the takings claim barred by the statute of limitations. 586 F. Supp. at 790. That holding was adopted without comment by the Federal Circuit Court of Appeals. 847 F.2d at 779.

What is striking about the district court's opinion (and the Federal Circuit's brief affirmance of it) was its lack of contextural basis. Since the finding of military necessity by the Supreme Court and its presumption of military deference was the basis of the original *Korematsu* and *Hirabayashi* decisions, "nothing less than an authoritative statement by one of the political branches, purporting to review the evidence when taken as a whole, could rebut the presumption [of military deference] articulated in *Korematsu*." 782 F.2d at 251. In this case, the "authoritative statement" was the REPORT OF THE COMMISSION ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS, PERSONAL JUSTICE DENIED (1982), the report of the Congressional Commission set up in 1980 to investigate the internment which concluded that information had been withheld from the Supreme Court. *Id.* at 252.

Indeed, even the district court upon dismissing the case, was forced to acknowledge that a challenge to a finding by the Supreme Court was a "formidable obstacle," but noted that such a task had been accomplished previously by "diligent advocates." 586 F. Supp. at 788. However, what was left undiscussed by either the district court or the Federal Circuit was the effect of the political and social climate in the "late 1940s" or even in the early 1950s in terms of the reality of expecting the Supreme Court to be receptive toward Japanese-Americans challenging Court findings made only a few years before. The political climate with respect to the Japanese-Americans being seen as foreigners had probably changed little, given that Asian Americans are still seen as foreigners even today. See, e.g., Cynthia Kwei Yung Lee, *Beyond Black and White: Racializing Asian Americans in a Society Obsessed with O.J.*, 6 HAST. WOMEN'S L.J. 165, 174-86 (1995) (describing the stereotypes of Asians Americans as foreigners and outsiders).

Moreover, given what information was available in the 1940s—several internal government documents dismissing any Japanese-American security threat—it seemed eminently reasonable to expect that the Japanese-American community would assume that a challenge to the military deference rationale would be unsuccessful. 847 F.2d at 783 (Baldwin, dissenting) ("According to the trial court, the only obstacle in their way was a pair of Supreme Court decisions upholding [the government's] actions and granting complete deference to the military's judgment. . . . At that time, however, with information available, they were destined for dismissal on the pleadings.") Indeed, two of the major cases cited by the district court of successful challenges to Supreme Court findings (*Brown v. Board of Education*, 347 U.S. 483 (1954) challenging *Plessy v. Ferguson*, 163 U.S. 537 (1896) and *Erie Railroad Co. v. Thompson*, 304 U.S. 64 (1938) challenging *Swift v. Tyson*, 41 U.S. (16 Pet.) 1 (1842)) had intervals of decades between them, thus allowing the passage of time to temper the assumptions inherent in the earlier opinions.

"multimillion dollar recovery [and] exerted [even more] pressure on Congress concerning granting reparations."¹⁶

The suspicion that the *Hohri* class action lawsuit was a motivating factor is not without support in the record. There is ample evidence that *Hohri* was very much on the mind of Congress during its debate over the bill.¹⁷

Moreover, Yamamoto postulated that the "model minority" stereotype conveyed a number of silent messages which in turn conveyed the notion that if other minorities were the same as Japanese-Americans and overcame hardship without government aid, they would be "rewarded" as well.¹⁸ Indeed, these fears are also well founded. Contemporaneous stories in the national and local popular press about how Asian Americans were a "model minority" were prevalent during

Finally, there are compelling reasons to suggest that, in the first instance, the standard of review to decide the issues such as the incarceration of Japanese-Americans should not be whether the presumption of military necessity can be overcome. Professor Yamamoto has urged that in cases where the government imposes restrictions on civil liberties, except in circumstances of martial law, justifications of "national security" or "military necessity" should not replace the existing constitutional standard of review focusing on the right restricted. Eric K. Yamamoto, *Korematsu Revisited—Correcting the Injustice of Extraordinary Government Excess and Lax Judicial Review: Time for a Better Accommodation of National Security Concerns and Civil Liberties*, 26 SANTA CLARA L. REV. 1, 41-42 (1986). Indeed, the traditional standard of requiring a compelling state interest in cases of racial classification should encompass the question of whether there is a national security interest at stake. *Id.* at 42.

16. Yamamoto, *supra* note 15, at 225 n.8. See also, LESLIE T. HATAMIYA, RIGHTING A WRONG: JAPANESE AMERICANS AND THE PASSAGE OF THE CIVIL LIBERTIES ACT OF 1988 177-78 (1993) (noting that the class action suit may have made H.R. 442 "appear to be a relatively inexpensive for of redress . . . [and] may have given representatives and senators an incentive to vote for H.R. 442"). For a full description of the motivation, organizing, and effect of the class action lawsuit see WILLIAM H. HOHRI, REPAIRING AMERICA: AN ACCOUNT OF THE MOVEMENT FOR JAPANESE-AMERICAN REDRESS (1988).

17. See reference made by Senator Stevens to "hundreds of billions of dollars" if a court awarded damages in terms of compensatory and punitive damages. 134 Cong. Rec. S4329 (April 20, 1988); reference by Senator Domenici to the ruling in district court that the *Hohri* class action had cause of action for losses. *Id.* at S4399. See also the reprinted statement of Richard K. Willard, Assistant Attorney General, Civil Division, United States Department of Justice, reviewing related litigation including the *Hohri* class action. *Id.* at S4403-04; the reference by Senator Helms to the *Hohri* litigation as making legislation inappropriate. *Id.* at S4408. See also the statement by Congressman Frank that the bill would be in effect a settlement of the *Hohri* class action lawsuit. 133 Cong. Rec. H7560 (September 17, 1987); the reference by Congressman Levine to *Hohri* lawsuit. *Id.* at H7571; the reference by Congressman Vento that the bill would "avoid court ordered reparations" if the *Hohri* class action were carried through to fruition. *Id.* at H7586; a reading of a letter by President Reagan into record by Congressman Frank supporting the bill and specifically citing the bill's ensuring that "acceptance of compensation under the legislation fully satisfies claims against the United States based on the unique circumstances of the internment." 134 Cong. Rec. H6312 (Aug. 4, 1988).

18. Yamamoto, *supra* note 15, at 238. Yamamoto points out that the model minority stereotype:

the time of debate and passage of the redress bill.¹⁹ It is no accident that there is ample evidence in the record of allusions to the "model minority" image of Asian Americans, and particularly of Japanese-Americans.²⁰

Thus, Yamamoto, among others, has concluded that Japanese-Americans had a responsibility to scrutinize their "model minority" status, challenge governmental excesses of power domestically and internationally, and address issues affecting people of color.²¹ Indeed, monetary reparations for Japanese-Americans come with a responsibility—a refusal to be used to excuse or perpetuate the racism that caused the internment in the first instance.²²

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1. minimizes the deep-seated harm inflicted upon Japanese-Americans by the misuse of the government's power;
 2. masks the problems of poor Asian communities and continuing discrimination against Asians;
 3. excuses government from acting affirmatively to eradicate discrimination and subordination by emphasizing self-sufficiency;
 4. falsely privileges Asian-Americans at the expense of others driving a wedge between them and other groups of color.

Id.

19. See, e.g., Martin Kasindorf, Paula Chin, Diane Weathers, Kim Foltz, Daniel Shapiro & Darby Junkin, *Asian Americans: A "Model Minority,"* NEWSWEEK, Dec. 6, 1982, at 39; Daniel A. Bell, *The Triumph of Asian-American; America's Greatest Success Story*, NEW REPUBLIC, July 15, 1985, at 24; Beverly McLoed, *The Oriental Express; Asian American Immigrants Are Seen as a "Model" Minority on a Fast Track to Success*, PSYCHOLOGY TODAY, July, 1986, at 48; David Brand, *The New Whiz Kids; Why Asian Americans Are Doing So Well, and What It Costs Them*, TIME, Aug. 31, 1987, at 42; Opinion/Editorial, *The Asian Family: Garden of Values*, SAN-DIEGO UNION TRIB., Feb. 4, 1986, at B6; Jim Spencer, *Why Fu Lien Can Read, For Asian Americans, Learning Is a Family Obligation*, CHI. TRIB., Jan. 15, 1986, at C1.

20. See reference by Senator Hecht that many Japanese-Americans were "multimillionaires today." 134 Cong. Rec. S4328 (April 20, 1988); the reference by Senator Helms to the fact that "wealthy Asian Americans" were opposing Representative Dan Lundgren's reelection because Lundgren opposed individual reparations. *Id.* at S4413; the reference by Congressman Shumway (opposing bill) to Japanese Americans as "some of the most respectable, hard-working, loyal Americans that we have in this country." 133 Cong. Rec. H7564 (September 17, 1987); the reference by Congressman Levine to Japanese Americans' "great contributions to our country" in "business, architecture, science, medicine, education" and that "[s]ome of our greatest scientists, educators and business leaders are Japanese-Americans." *Id.* at H7569; the reference by Congressman Packard to the fact that "[o]ur Japanese friends don't need [the reparations money]." *Id.* at H7581; the reference by Congressman Brown that some of Colorado's "finest citizens. . . some of our most honest, hardworking, and productive human beings" came from the relocation camps to Colorado. *Id.* at H7594; the statement by Congressman Lehman stating that bill would serve to show "the respect we all have for the contributions that Japanese-Americans have made to our society." 134 Cong. Rec. H6314 (August 4, 1988); the statement by Congressman Shumway that "[w]e count Japanese-Americans as some of the most respectable, hard-working, loyal Americans that we have in this country." 133 Cong. Rec. H7564 (September 17, 1987).

21. Yamamoto, *supra* note 15, at 240.

22. *Id.* at 240 (citing address reprinted by the Asian Law Caucus by Mari Matsuda).

But the actual content of that refusal is a more difficult and complex question. The refusal to be used to perpetuate subordination implies the existence of a shared political vision and a united political will. However difficult that consensus may be to achieve, part of the process of acting upon that responsibility lies in repudiating the political and ideological values that were implicit during Congressional debate on the redress bill itself. Moreover, since influential economic forces benefitted from the relocation, Japanese-Americans are compelled to be even more vigilant in scrutinizing and exposing connections to powerful economic interests when governmental decisions are made that have a negative impact upon the poor and people of color.²³

There is a particular irony about the debate on the redress bill. While there was general agreement, at least rhetorically, on the injustice of the internment, all the glowing historical references centered around those contemporary political and ideological positions that *justified* and *accommodated* the decision to intern Japanese-Americans.²⁴ Those who at the time of internment saw it for the injustice and outrage that it was and chose to dissent continue to be silenced and unheralded even during the process of acknowledging their prescience.

In essence, what Americans were being told by Congress to celebrate by the giving of redress to Japanese Americans, was that patriotism—the kind of patriotism that does not resist injustice—gets

23. Part of the cry for Japanese-American internment was raised by "influential agriculturalists who had long cast their covetous eyes over the coastal webwork of rich Japanese-owned land, a superb opportunity had thus become theirs for the long-sought expulsion of an unwanted minority." MICHU NISHIURA WEGLYN, *YEARS OF INFAMY* 36 (1976). Weglyn noted that although comprising only 1 percent of California's population, Japanese-Americans controlled over 50 percent of the commercial truck crops before internment such that the retail distribution of fruits and vegetables in Southern California "was already a firmly entrenched monopoly of Japanese Americans." *Id.* at 37.

It was a common practice among the Issei to snatch up strips of marginal unwanted land which were cheap: swamplands, barren desert areas that Caucasians disdained to invest their labor in. . . . The extraordinary drive and morale of these hard-working, frugal Issei who could turn parched wastelands, even marshes, into lush growing fields—usually with help from the entire family—became legendary. In the course of the years, notably during periods of economic crisis, a hue and cry arose of "unfair competition" and accusations that "the Japs have taken over the best land!"

Id.; see also ROGER DANIELS, *PRISONERS WITHOUT TRIAL: JAPANESE AMERICANS IN WORLD WAR II* 13-14 (1993) (discussing the economic success and influence of the Japanese-American population in California and Washington before the internment camps and the backlash caused by it).

24. It is somewhat analogous to condemning the Nazi invasion of France—and celebrating the Vichy government.

rewarded.²⁵ Thus, the ideological baggage of the decision to redress the injustice of internment is the celebration of the “superpatriotic” response to it. It is this response—the ideological component of the model minority stereotype—and its celebration by Congress that contains great lessons and holds great dangers for Japanese-Americans in particular and Asian Americans in general.²⁶

Part I will review the ideological themes that were put forward by Congressional supporters of the redress bill. These themes were echoed by specific political positions taken during the time of internment within the Japanese-American community that urged acquiescence to the relocation and counseled unquestioning obedience to all governmental action no matter how unjustified. Part II postulates how an uncritical adoption of the Congressional attitude toward Japanese-Americans and the normative values inherent in Congressional approval of the redress bill implicate present day issues with respect to America’s racial hierarchy and Asian Americans’ place within it.

Finally, it should be emphasized at the outset that I have no criticism of the way organizations, individuals, and their families responded to relocation. My intent here is not to second guess with the benefit of perfect hindsight the particular decisions that individuals and families made about their response to relocation. I recognize how difficult it is for someone who did not experience it to understand the tenor of the racial hysteria after Pearl Harbor and the dangers faced by the Japanese-American community. Neither is it my purpose

25. This is not to ignore the various reasons why Senators opposed giving any redress for the violation of Japanese-Americans’ rights. Indeed, the very same racism equating Japanese nationals with Japanese-Americans that caused the hysteria that led to the camps forty-five years earlier was still evident on the floor of both the Senate and the House in 1988.

Senator Helms proposed that no redress should be forthcoming to Japanese Americans until “the Government of Japan has fairly compensated the families of the men and women who were killed as a result of the Japanese bombing of Pearl Harbor on December 7, 1941.” 134 Cong. Rec. S4398 (April 20, 1988). This racist equation was echoed in the House by Congresswoman Bentley who stated that she was opposed to the legislation because American prisoners of war “who were treated cruelly and frequently tortured, sometimes tortured to death” were more deserving. 134 Cong. Rec. H6309 (August 4, 1988).

26. To put a celebration of a “super-patriotic” response to racial injustice in a contemporary context, it is instructive to note that Ward Connerly, the African-American millionaire who as a Regent of California University and later as a leader for the effort to pass the eventually successful Proposition 209 California ballot measure that banned affirmative action in hiring, contracting and college admissions, has been described as “extravagantly patriotic.” Barry Bearak, *Questions of Race Run Deep for Foe of Preferences*, N.Y. TIMES, July 27, 1997, at A1, 20. It is reported that Connerly claims to recite the Pledge of Allegiance and the opening lines of the Declaration of Independence six to ten times a day. *Id.* at 20.

to dispute assertions that the response of many in the wartime Japanese American community to prove their loyalty may have been the key to allowing Congressional acceptance of redress. Rather, my purpose in reviewing the implications of the various positions taken by members of the Japanese-American community at the time of relocation is to seek out the lessons that hindsight might give to help ensure that internment or its equivalent will not happen again to us or anyone else. Thus, there should be no mistake that the major thrust of my concern and criticism lies not with the response of any victim of this injustice, but with the lessons that Congress wants us to draw from it.

I. THE TENOR OF THE CONGRESSIONAL DEBATE

Throughout Congressional debate about the internment camps two consistent themes emerge—the injustice of the internment itself, and the patriotic response of the Japanese-American community throughout the internment ordeal exemplified by their acquiescence and unqualified support of it. Indeed, the halls of Congress rang with fervent denunciations of the camps, the atmosphere of racial paranoia, and the scapegoating of Japanese-Americans as profoundly un-American. Typical of the remarks in favor of the redress legislation were those of Congressman Rodino:

The preamble of the Constitution speaks eloquently about the blessings of liberty, the most basic and fundamental of our civil rights. All American citizens enjoy these rights and they expect to be protected from arbitrary imprisonment by the Federal Government. Some 40 years ago during World War II, the Federal Government without providing any due process under law, sent nearly 120,000 loyal American citizens and resident aliens of Japanese ancestry to remote internment camps. Many of these individuals, in the panic of sudden departures, lost their businesses, farms, and homes. Most of all they were deprived of their personal freedom. This great wrong to this day remains uncorrected. A truly great nation is worthy of its greatness when it recognizes that it has made mistakes. We now have the opportunity to recognize and to redress this grave injustice by the passage of [the redress bill].²⁷

Yet, despite this acknowledged injustice of the internment, there was much focus and laudatory praise of the acquiescent response to it. The sentiments of Congressman Yates are typical:

27. Remarks of Congressman Rodino, 133 Cong. Rec. H7559 (Sept. 17, 1987).

When the attack on Pearl Harbor came immediately the people of Japanese ancestry became targets for suspicion throughout the United States and Hawaii without cause or provocation. Japanese who had been living in California for many years were uprooted, homes destroyed, and they themselves placed behind barbed wire detention fences without a hearing or trial. . . . [T]his should have been enough to kill the spirit of a less responsible group of people. But the reply from the Japanese parents was to sent [sic] their children out from behind the wire fences into the American Armed Forces to fight the Nazis and the armed forces of their ancient homeland.²⁸

The reference to the heroism and success of the segregated Japanese-American army unit, the 442nd Regimental Combat Team is also typical.²⁹ The accolades were much deserved, and celebrated achievements about which all Americans, particularly Japanese-Americans, are proud.³⁰ Yet, the Congressional debate is barren of favorable, indeed any, references to those heroic "others"—Japanese-American draft resisters who refused to fight for the United States until their families were freed from the camps.³¹

28. 133 Cong. Rec. H7582 (Sept. 17, 1987).

29. Indeed, the House number of the bill was H.R. 442. The accomplishments of the 442nd Regimental Combat Team are without peer. The 442nd, and its predecessor unit the 100th Infantry Battalion from Hawaii, won 7 Presidential Unit Citations, 1 Congressional Medal of Honor, 52 Distinguished Service Crosses, 588 Silver Stars, 9,486 Purple Hearts, fought in 7 major campaigns, and suffered 680 fatalities. See remarks of Senator Adams, 134 Cong. Rec. S4277 (Apr. 19, 1988); see also DANIELS, *supra* note 23, at 64 (noting that the 442nd was the "most decorated unit in the entire American Army" including one Congressional Medal of Honor). Daniels observed that: "[I]n what may have been the supreme irony of their service, the men of the 442nd helped to liberate the Nazi concentration camp at Dachau even while their parents and other relatives were still held in American concentration camps." *Id.*

See also remarks about the 442nd of Senator Matsunaga, 134 Cong. Rec., S4271 (Apr. 19, 1988); Senator Inouye, *id.* at S4323 (Apr. 20, 1988); Sen. Matsunaga, *id.* at S4324, S4330; Congressman Bonior, 133 Cong. Rec. H7556 (Sept. 17, 1987); Congressman Yates, *id.* at H7582 (remarking no 442nd member deserted); Congressman Blaz, 134 Cong. Rec. at H6310 (Aug. 4, 1988); Congressman Fazio, *id.* at H6312; Congressman Mineta, Cong. Rec., *id.* at H6313; Congressman Lehman, *id.* at H6314.

30. See remarks of Congressman Hoyer, 133 Cong. Rec. H7580 (Sept. 17, 1987) (noting that of the 4500 men in the 442nd: 5300 Bronze Stars, 18,000 individual decorations, decorated by 18 allied nations including the French *Croix de Guerre* and the Italian *Croce al Merito di Guerra* were awarded).

31. See HOHRI, *supra* note 16, at 172-75 (quoting hearing testimony of Jack Tono before the Commission on Wartime Relocation and Internment of Civilians ("CWRIC") in New York on November 23, 1984). Tono testified that he and a group of 62 other men protested the military service of Japanese Americans while their families were in camp "to right the wrong that was done to us as Japanese Americans." *Id.* at 174.

In all, 315 internees were arrested for violations of Selective Service Laws. *Id.* at 6. They came from the camps at Topaz, Poston, Granada, Heart Mountain, Jerome, Minidoka, Rohwer,

In fact, the Fair Play Committee at Heart Mountain Relocation Center was organized to protest the violation of constitutional rights.³² In March 1944, it published a leaflet protesting the injustice of being ordered to join a segregated unit in the army without restoration of their constitutional rights.³³ The Committee declared: "We are not being disloyal. We are not evading the draft. We are all loyal Americans fighting for JUSTICE AND DEMOCRACY RIGHT HERE AT HOME."³⁴

The seven leaders of the Heart Mountain draft resistance movement, Kiyoshi Okamoto, Paul Nakadate, Ben Wakaye, Ken Yanagi, Frank Emi, Minoru Tamesa, and Sam Horino were convicted later that year on draft conspiracy charges.³⁵ Yet these men and others who

and Tule Lake. *Id.* at 14. Of the 315, 263 were convicted. *Id.* At Poston Relocation Center, approximately 200 young men were eventually indicted and tried for violations of the Selective Service Act for their refusal to be drafted to take up arms for freedom which neither they nor their parents enjoyed. WEGLYN, *supra* note 23, at 126-27, 303 n.37.

During the Congressional debate on the bill, Congressman Pelosi did acknowledge the efforts to overturn the wartime convictions of Fred Korematsu, Gordon Hirabayashi, and Minoru Yasui. 134 Cong. Rec. H6314 (Aug. 4, 1988). Fred Korematsu, Gordon Hirabayashi, and Minoru Yasui all individually challenged the evacuation of Japanese-Americans from designated military zones, based upon Executive Order 9066, signed by President Roosevelt on Feb. 19, 1942. All were arrested and convicted of curfew and evacuation violations. Their cases went to the Supreme Court and all were denied justice in *Hirabayashi v. United States*, 320 U.S. 81 (1943); *Yasui v. United States*, 320 U.S. 115 (1943); and *Korematsu v. United States*, 323 U.S. 214 (1944). The other wartime legal challenge to relocation was *Ex Parte Endo*, 323 U.S. 283 (1944) which granted her writ of *habeas corpus* releasing her from detention holding that the War Relocation Authority (WRA) could not detain loyal citizens. However, the War Department was secretly notified of the Supreme Court's *Endo* decision ten days before it was announced, and it rescinded the exclusion and detention orders one day before the decision was handed down. HATAMIYA, *supra* note 16, at 24.

Much has been written about the struggle of Korematsu, Yasui, and Hirabayashi to have their convictions reversed on writs of *coram nobis* (*Korematsu v. United States*, 584 F. Supp. 1406 (N.D. Ca. 1984); *Hirabayashi v. United States*, 828 F.2d 591 (9th Cir. 1987); Yasui died before his petition could be finally adjudicated, see IRONS, *infra* at 29-30) as well as the critical roles played by activists, lawyers, and scholars. See, e.g., PETER IRONS, JUSTICE DELAYED: THE RECORD OF THE JAPANESE AMERICAN INTERNMENT CASES (1989). It goes without saying that both their courageous resistance to the internment as well as their fight to seek judicial redress of their convictions was a major inspiration for the redress movement. See HATAMIYA, *supra* note 16, at 171-72. Hatamiya observed that the successful *coram nobis* petitions which had shown the deliberate suppression of evidence by the government in 1943-44 that no threat of Japanese-American espionage or sabotage existed, had a major education and public relations impact. *Id.* at 170-72. It "wiped away any legal basis for a nay vote on the redress legislation on the grounds that there had been at least some military necessity for the orders." *Id.* at 172.

32. *Id.* at 13.

33. *Id.* at 33.

34. *Id.* (emphasis original).

35. *Id.* at 13. See also DANIELS, *supra* note 23, at 64 (noting that 85 inmates of Heart Mountain relocation camp refused military induction on the basis that so long as there was

also sacrificed for hallowed democratic principles went unnoticed during the congressional debate.

The congressional decision to celebrate the "blind obedience" response to injustice rather than resistance to it would be merely short-sighted if done in isolation. However, this perspective is consistent throughout the congressional debate and sends a clear message about what lessons that the Congress and President Reagan who later signed the bill hoped the law would teach to Japanese-Americans and people of color in general.

Reference to the redress bill both before and after its passage is striking in one unique aspect. There is an express and consistent connection made between the bill and the political perspective of Mike Masaoka, the Executive Secretary and spokesperson of the Japanese American Citizens League (JACL) at the time of the internment.³⁶

internment, there was no obligation to serve in the military). Daniels notes that of the 385 men from Heart Mountain who entered the army, eleven were killed and fifty-two were wounded. *Id.* There were 3,600 men who entered the army directly from the camps of which at least 172 were killed in action, 590 were wounded and fifteen declared missing. *Id.*

The JACL, in 1990, adopted a resolution that recognized those Japanese American draft resisters who declared their loyalty to their country but were also dedicated to the principle of defending their civil rights, were willing to make significant sacrifices to uphold their beliefs. . . in a different form from those who sacrificed their lives on the battlefields; and that they too deserve a place of honor and respect in the history of Americans of Japanese ancestry.

CHICAGO SHIMPO, Aug. 15, 1990, at 1 (quoting the Hokubei Mainichi); see also ASIAN WEEK, June 29, 1990, at 12.

36. See, e.g., remarks of Congressman Matsui inserting Masaoka's "Japanese American Creed" written in 1941 into the record:

I am proud that I am an American citizen of Japanese ancestry, for my very background makes me appreciate more fully the wonderful advantages of this Nation. I believe in her institutions, ideals and traditions; I glory in her heritage; I boast of her history; I trust in her future. She has granted me liberties and opportunities such as no individual enjoys in this world today. She has given me an education befitting kings. She has entrusted me with the responsibility of franchise. She has permitted me to build a home, earn a livelihood, to worship, think, speak, and act as I please—as a free man equal to every other man.

Although some individuals may discriminate against me I shall never become bitter or lose faith, for I know such persons are not representative of the majority of the American people. true, I shall do all in my power to discourage such practices, but I shall do it in the American way: above board, in the open, through courts of law, by education, by proving myself to be worthy of equal treatment and consideration. I am firm in my belief that American sportsmanship and attitude of fair pay [sic] will judge citizenship and patriotism on the basis of action and achievement, and not on the basis of physical characteristics.

Because I believe in America, and I trust she believes in me, and because I have received innumerable benefits from her I pledge myself to do honor to her at all times and in all places, to support her Constitution, to obey her laws, to respect her Flag, to defend her against all enemies, foreign or domestic, to actively assume my duties and obligations as a citizen, cheerfully and without any reservations whatsoever, on the hope that I may become a better American in a greater America.

134 Cong. Rec. H6308-09 (Aug. 4, 1988).

This is significant because the position of the JACL, and in particular Masaoka, at the time of the internment was one of complete and uncritical support for it. It was the JACL that urged unquestioning compliance with it and actively cooperated with the government in suppressing any dissent within the Japanese-American community.³⁷

Typical of the sentiments expressed about Masaoka and the activity of the wartime JACL are Congressman Edward's remarks on the floor of Congress on December 21, 1987.³⁸ Edwards's ostensible purpose was to put into the record the news of the recent publication of Masaoka's autobiography, "They Call Me Moses Masaoka."³⁹ In the beginning of his remarks Edwards alluded to the fact that the House of Representatives had recently approved the Civil Liberties Act and that it only was awaiting approval by the Senate. He then went on to recognize Masaoka's participation in the redress issue itself.⁴⁰ Quite remarkably, he then devoted a substantial portion of his remarks to a ringing endorsement of the political positions that had been taken by Masaoka and the JACL during the period of internment:

Masaoka explains in considerable detail the reasons for JACL's controversial cooperation in the initial evacuation orders, noting that even with the benefit of almost half a century of hindsight, he does not know of any knowledgeable individual, evacuee or others, who has advanced a viable, practical, and effective alternative to their reluctant and difficult but patriotic decision. As a former FBI agent

Within two years of the articulation of the creed, Japanese-Americans were behind barbed wire. See DANIELS, *supra* note 23, at 20.

Masaoka was also eulogized on the floor of Congress after his death in 1991 by Congressman Dixon, 137 Cong. Rec. E2854-02 (August 2, 1991); Congressman Minetta, 137 Cong. Rec. H5890-01 and H5885-86 (July 25, 1991); Congressman Abercrombie, *id.* at H5891; Congressman Frank, *id.* at H5891-02; Congressman Yates, *id.* at H5892-06; Congressman Levine, *id.* at H5896; Congressman Berman, *id.* at H5896-97; Congressman Lehman, *id.* at H5897; Congresswoman Boxer, *id.*; Congressman Lantos, *id.*; Congressman Mavroules, *id.* at E2726-27; Congressman Edwards, *id.* at H5886-87; Congressman Matsui, *id.* at H5887-88; Senator Inouye, 137 Cong. Rec. S9099 (June 28, 1991). In each of these eulogies, allusions were made to his leadership in the passing of the Civil Liberties Act of 1988. For a discussion of the positions on the Civil Liberties Act of 1988 by the wartime JACL leadership such as Masaoka, see *infra* notes 80-82 and accompanying text.

It should be noted that this tribute came after the original funding was appropriated on November 21, 1989 when President Bush signed H.R.2991 establishing redress as an entitlement program. However, it was not until March 1992 that amendments were introduced in the House and Senate to extend redress benefits to an additional 20,000 eligible recipients who were not to receive payment under the original entitlement program. See HATAMIYA, *supra* note 16, at 186.

37. See *infra* notes 65-82 and accompanying text.

38. 133 Cong. Rec. H11938-03 (Dec. 21, 1987).

39. *Id.*

40. *Id.*

who also was very much aware of the true mood and atmosphere of the situation on the Pacific Coast, however, I can vouch for the fact that there appeared to be no other pragmatic or realistic choice but to comply with the military, which those of Japanese ethnicity did without violence or terrorism.⁴¹

What is noticeably absent in Edwards's defense of Masaoka's historical role is any reference to the reasons why JACL's cooperation was "controversial" in the first instance. Indeed, it only hints at other contemporaneous perspectives that existed within the Japanese-American community at the time.

II. RESISTANCE TO INCARCERATION

The relocation of the entire Japanese American population of the West Coast did not proceed without meeting resistance. In fact, "over 100 Japanese-Americans deliberately violated at least one of the orders."⁴² Moreover, other than the resistance to the draft, even within the internment camps and under armed guard, there were periodic strikes and even riots resulting in numerous casualties and fatalities from the army's suppression of them.⁴³ Numerous acts of overt mass resistance have been documented:

41. *Id.* It should be noted that my purpose in looking at the political positions of Masaoka and its reflection in the activities and positions taken by the JACL during the internment is not to denigrate either Masaoka or the JACL's achievements. Indeed, many credit Masaoka and the JACL with being a significant force in the final granting of citizenship rights for the Issei in 1952. See WEGLYN, *supra* note 23, at 268 (which she calls a "veritable tour de force for the Japanese American Citizens League . . . achieved largely through the intensive lobbying efforts of its Washington representative, Mike Masaoka"). Moreover, this piece is not primarily meant to be criticism of the internment position taken by the JACL and its supporters, although there are many troubling questions about its wartime activities. The piece is directed at the political lessons that may be drawn from the experience and these political positions to avoid the same kind of tragedy happening again, not only to Japanese Americans, but to any other people. Moreover, it is in recognition that while there are no places officially called "internment camps" in the present, there are conditions for many people of color whether it be in the urban ghettos or on "reservations" or in penal institutions, that are the result of social, political, and economic barriers that may be even more difficult to surmount than the barbed wire ones which held my parents and relatives captive.

42. See HATAMIYA, *supra* note 16, at 23.

43. William Hohri articulates three attempts at redress during the camps: (1) the attempt by James Omura in Colorado to organize legal action against the United States to restore civil and citizenship rights for Japanese-Americans in 1942; a letter written from inside the camps by Joseph Y. Kurihara in 1943 in which he proposes \$5000 for "each and every evacuee"; and (3) Kiyoshi Okamoto and James Omura leading the draft resistance at Heart Mountain Relocation Camp, and later in 1946 Okamoto establishing "The Fair Rights Committee" to seek restitution for the internees. See HOHRI, *supra* note 16, at 28-34.

(1) a farm strike at Tule Lake Relocation Center on August 15, 1942, over inadequate food rations, work speed-up, wages and work clothing allotment;⁴⁴

(2) a construction strike at Tule Lake Relocation Center on September 3, 1942, over layoffs without pay, reduction in the Japanese-American crew in favor of white crew members, and lack of clothing;⁴⁵

(3) a petition campaign resulting in 9,000 signatures and a mess hall "slowdown" at Tule Lake Relocation Center, on October 12, 1942, over food distribution and mess hall conditions;⁴⁶

(4) a general strike at Poston Relocation Center on November 15, 1942, over the arrest of two camp residents suspected in the beating of FBI informers;⁴⁷

(5) a riot at Manzanar Relocation Center on December 5, 1942, over arrests resulting from the beating of a suspected "inu," in which machine guns were fired and gas bombs thrown at camp residents by soldiers resulting in 10 wounded and 2 killed;⁴⁸

(6) a strike by a coal crew at Tule Lake Relocation Center on October 7, 1943, over working conditions;⁴⁹

(7) a strike by farm workers at Tule Lake Relocation Center on October 15, 1943, over dangerous working conditions having resulted in an accident injuring 29 workers and killing one;⁵⁰

(8) a hunger strike by 200 detainees at Tule Lake Relocation Center on December 31, 1943, over their arrest as a result of the imposition of martial law at Tule Lake;⁵¹

(9) a mass demonstration at Tule Lake Relocation Center on November 1, 1943, over general conditions including racism of Caucasian personnel toward camp residents.⁵²

44. See DOROTHY S. THOMAS & RICHARD NISHIMOTO, *THE SPOILAGE: JAPANESE-AMERICAN EVACUATION AND RESETTLEMENT DURING WORLD WAR II* 41-42 (1969).

45. *Id.* at 43.

46. *Id.*

47. *Id.* at 45-49. JACL members were often suspected by camp residents of being informers or "inus." The literal Japanese translation of the term is "dog." See THOMAS & NISHIMOTO, *supra* note 44, at 45-52.

48. *Id.* at 49-51; see also WEGLYN, *supra* note 23, at 121-25.

49. THOMAS & NISHIMOTO, *supra* note 44, at 113.

50. *Id.* at 114-15.

51. *Id.* at 174.

52. See WEGLYN, *supra* note 23, at 162.

Indeed, the attitude among many camp inmates was one of disquiet and resistance over many issues, and disagreement over the extent to which the community should cooperate with the government was both widespread and contentious. This cleavage over the reaction to the internment might be best illustrated by the reaction to the administration of the "Loyalty Oath" to internees who were seventeen or older.⁵³ The outrageous insensitivity of the requirement of the oath taking aside, for the incarcerated Japanese American population, it created unfathomable community pressures.⁵⁴

The Loyalty Oath questions permitted only "yes" or "no" answers. However, irrespective of their political views, the fact remained that "yes" answers to the loyalty questions for the Issei, who were not citizens of the United States, left them with the possibility of becoming people without a country.⁵⁵ Some felt that a "yes" answer could be a trap to identify Japan sympathizers since it could be interpreted as an admission of prior allegiance to Japan.⁵⁶ A "no" answer to question twenty-seven with respect to armed forces service could have less to do with disloyalty than with repugnance for the fact of incarceration.⁵⁷ Indeed, complying with the evacuation itself could be seen as the ultimate test of loyalty.⁵⁸ Many wondered whether the "yes/yes" responders were going to be "rewarded" by being drafted while the "no-no" responders were to be "rewarded" with continued incarceration or worse.⁵⁹ Indeed, some Issei feared that a "yes" response would get them thrown out of camp without resources.⁶⁰

53. The "Loyalty Oath" in actuality consisted of two identical questions in two different forms—one for draft age Nisei, the "Statement of United States Citizenship of Japanese Ancestry," and the other for Issei and female Nisei, "Application for Leave Clearance." They were as follows:

No. 27. Are you willing to serve in the armed forces of the United States on combat duty, wherever ordered?

No. 28. Will you swear unqualified allegiance to the United States of America and faithfully defend the United States from any or all attack by foreign and domestic forces, and forswear any form of allegiance or obedience to the Japanese emperor, to any other foreign government, power or organization?

See WEGLYN, *supra* note 23, at 136.

54. Incredibly, this oath was administered to a population that had just been uprooted, terrorized and unjustly incarcerated by their government. The action by the WRA has been characterized as one of "incredible stupidity," DANIELS, *supra* note 23, at 68, and "colossal folly," WEGLYN, *supra* note 23, at 135.

55. See WEGLYN, *supra* note 23, at 136-37.

56. *Id.* at 137-38.

57. *Id.*

58. *Id.*

59. *Id.*

60. See DANIELS, *supra* note 23, at 69.

In any event, almost 9,000 residents answered question twenty-eight "no" and were classified as "disloyal," although the precise reasons for that answer probably could not be neatly assumed or categorized.⁶¹ Those deemed "disloyal" were all transferred to Tule Lake Relocation Center; those deemed "loyal" at Tule Lake were transferred to other camps.⁶² The aftermath of this cleavage was devastating:

On the surface, this innocuous questionnaire resulted in the transfer of 18,711 evacuees between centers for the purpose of segregation and in 4,224 cases, eventual repatriation. . . . In actuality, the "Loyalty Oath" served to segregate generation against generation, religion against religion, family against family, and wreaked havoc on households and individuals—a veritable civil war with no winners.⁶³

Thus, the tributes in connection to the political positions and choices of Masaoka and the JACL are more than just recognition of an individual's or an organization's contributions to his country. Given the history of contemporaneous and relatively substantial resistance to internment—a governmental action which even the government now concedes was without justification—the extraordinary recognition and official government imprimatur of what some would consider the extreme positions taken by the JACL and its spokesperson Masaoka require greater scrutiny.⁶⁴

III. THE WARTIME JAPANESE AMERICAN CITIZEN'S LEAGUE UNDER MASAOKA

The wartime JACL was a group of young Nisei struggling to cultivate a leadership role in the Japanese-American community.⁶⁵ Before

61. *Id.* at 69.

62. *Id.* at 70.

63. HOHRI, *supra* note 16, at 136 (quoting the testimony before the Commission on War-time Relocation and Internment of Civilians of Lawson Inada, professor of English at Southern Oregon College and well regarded poet).

64. It should be noted at the outset that the members of the JACL such as Edison Uno, Raymond Okamura, and William Hohri have consistently played an active role in pushing the organization to take stands on issues of equity and racial justice since the 1960s. Indeed, it was Edison Uno and other JACL members who first proposed the idea of redress. *See* HOHRI, *supra* note 16, at 37-38.

65. *See* WEGLYN, *supra* note 23, at 44-45. There is some evidence that although the JACL leadership had claimed to "speak for" the Japanese-American community during the internment, its actual membership barely reached 2000. This information is contained on page 15, section IIB of a report compiled in 1989 by Deborah Lim, an attorney and Asian Studies instructor at San Francisco State University who was hired by the JACL to research the wartime activity of the organization. *See, e.g.,* Sheila Muto, *Controversy over Report on JACL Wartime Role*,

the evacuation, it was the Issei who provided the Japanese-American community's leadership and stability.⁶⁶ The JACL's overall political agenda was one of "super-patriotism" in the face of racial and economic persecution.⁶⁷ Shortly after Pearl Harbor, the JACL moved toward "formal collaboration" with the Federal Bureau of Investigation to "inform on all individuals who appeared to be a danger."⁶⁸ Indeed, in practically every instance the JACL stood in vocal and active opposition to Japanese-American resistance to internment, and enthusiastically endorsed and supported the actions of the government with respect to internment and suppression of dissent:

—members of the JACL leadership were involved in identifying noncitizen Issei and Kibei community leaders to the FBI and Office of Naval Intelligence before Pearl Harbor;⁶⁹

—acted as government informants to identify those they "suspected of disloyalty" before the evacuation;⁷⁰

—acted as government informants inside the internment camps identifying "dissidents" and "disloyals";⁷¹

—the JACL leadership, including Masaoka, rather than advocating for Japanese-American interests to the War Relocation Authority (WRA), the governmental agency responsible for the maintenance of the camps, became actual employees of the WRA in exchange for freedom of movement;⁷²

12 *ASIAN WEEK*, Nov. 23, 1990, at 1. Her mandate was the result of a resolution passed at the JACL's 1988 national convention to have the organization apologize for some of its actions during World War II. *See id.* In 1990, Lim completed her research and delivered a report ("The Lim Report") which was highly critical of the organization's activities but, the JACL released only a summary of her report deleting most of the critical content at its convention in 1990. *See* Clifford Uyeda, *JACL's Report on Dissidents*, *PAC. CITIZEN*, Aug. 31, 1990, at 5. In 1994, the organization agreed to release the original report. Takeshi Nakayama, *Lim Report to Be Released at National Convention*, *RAFU SHIMPO*, May 24, 1994. Moreover, I have looked at much of the original source material from which the Lim Report based its conclusions.

66. *See* PETER IRONS, *JUSTICE AT WAR 77* (1983).

67. *Id.*; *see also* WEGLYN, *supra* note 23, at 44-45.

68. IRONS, *supra* note 66, at 79. The Anti-Axis Committee was formed in 1941 by the Southern California JACL chapters to work with the FBI and governmental agencies to inform on the Japanese-American community. *See id.* In Seattle and San Francisco similar groups, called "Emergency Defense Councils" were formed. *See* Deborah K. Lim, Research Report Prepared for Presidential Select Comm. on JACL Resolution #7, at 25 (1990) (unpublished report, on file with the JACL in San Francisco).

69. *See* Lim, *supra* note 68, at 2-10.

70. *See id.*

71. *See id.* at 71-74.

72. *See id.* at 55-64.

—the JACL urged charges of sedition be brought against the draft resisters of Heart Mountain;⁷³

—the JACL considered any “no” answer to the Loyalty Oath an expression of disloyalty irrespective of the reason for the “no” answer.⁷⁴

In fact, there is evidence to the effect that in his capacity as Executive Secretary for the JACL, Masaoka proposed a “suicide battalion” of Japanese-Americans whose loyalty would be assured by having families and friends held by the government as hostages.⁷⁵ Even more disturbing was Masaoka’s proposal in 1942 to recommend to the government that Japanese-Americans be branded, stamped, and put under the supervision of the federal government, put into “labor concentration camps” to be utilized as “cheap labor” in the sugar beet fields, and that internees be used for road building in western states in return for resettlement.⁷⁶

That this extreme “superpatriotic” response to an acknowledged racial injustice would be celebrated by Congress is troubling.⁷⁷ Yet, in the clear vision that hindsight gives, this blindly obedient response on the part of the JACL could be simply written off as an understandable

73. See *id.* at 88. Saburo Kido, the JACL president during 1940-41 wrote in the *Pacific Citizen*, the newspaper of the JACL, referring to the Fair Play Committee at Heart Mountain, “Any person who incites or encourages any citizen to evade the draft is assuming a grave responsibility. It is needless to say the offense constitutes sedition.” *Id.*

74. See *id.* at 80-81. The conclusions reached by the Lim Report were circulated to the Japanese-American community after the successful redress campaign and caused a great controversy. See, e.g., Frank Abe, *JACL Study Critical of Its Own Wartime Policies*, INT’L EXAMINER, June 20, 1990, at 7; see also Frank Abe, *Report Says Wartime JACL Leaders Collaborated*, RAFA SHIMPO, June 12, 1990, at 1.

75. See WEGLYN, *supra* note 23, at 38.

76. See Lim, *supra* note 68, at 36.

77. Ironically, given the close cooperation with the FBI by the JACL, it is remarkable to discover that the agency did not return the JACL’s fealty to them. A wartime FBI survey of the Japanese community within the camps indicated their view was that:

One of the greatest causes for internal disorder has been perhaps the Japanese-American Citizens League. The members of the Japanese-American Citizens League have been very outspoken in proclaiming their loyalty to the United States. It is, of course, commendatory that these individuals would be loyal to this country; however, there are some indications that their views are as political as patriotic. It is the consensus of opinion among the Japanese that the Japanese-American Citizens league, in collaboration with the United States Government, “sold them out” and did not put up a fight to block relocation. This feeling is so predominant that the Japanese now refer to Mike Masuoko [sic], the national president of the Japanese-American Citizens League, as Moses Masuoko [sic], stating that he “led them out of California”. [sic] Many of the individuals who receive beatings have been members of the Japanese-American Citizens League, and as such are individuals who either cooperated with the Government agencies or were active in sponsoring loyalty programs.

Id. at 70-71 (quoting FBI survey of ten relocation camps).

reaction to extreme and dangerous conditions. However, the apologia for oppressive governmental action was a consistent response from the old-line JACL leadership lead by Masaoka, long after the internment and World War II was over. For example, although by 1972 the JACL, pushed by its more progressive caucuses and chapters, had adopted a resolution in opposition to the War in Vietnam, only two years earlier pro-Vietnam War sentiments were common for the old-line JACL activists.⁷⁸ What is even more revealing is the kind of stance taken by Masaoka during the early campaign for redress itself.

In the early 1970s, the JACL, pushed by the efforts of members like Edison Uno, adopted a series of resolutions in favor of redress legislation and in 1976 formed the National Committee for Redress.⁷⁹ However, in 1979, the JACL adopted a position supporting legislation for a study commission rather than redress legislation itself.⁸⁰ As such, the JACL did not support the first redress legislation introduced by Congressman Lowry in November, 1979.⁸¹ Indeed, at the Senate

78. See Official Minutes of the Japanese American Citizens League 22nd Biennial National Convention at 59-60 (on file with author) (urging "rapid" end of United States participation in the war); see also HOHRI, *supra* note 16, at 37-38. Hohri describes the attempt by "Sansei radicals" in 1970 at the JACL national convention to push the JACL to take positions against the Vietnam War and to take more aggressive positions on civil rights issues, and the "outrage" by many members of the organization. See *id.* As one of those "Sansei radicals" if memory serves, I remember that Masaoka was reported as not being pleased with our demonstrations.

79. See HOHRI, *supra* note 16, at 38, 41.

80. See *id.* at 44. The JACL retreat was an impetus for the creation of other redress organizations such as the National Council for Japanese American Redress (NCJAR). William Hohri, JACL member and one of the founders of NCJAR, recalls that the reasons given for the retreat were "hauntingly similar" to the reasons given "for the JACL's collaboration with the government's program of exclusion and detention. Were we being sold down the river again?" *Id.* at 45. He muses:

[T]he accommodationist role of the JACL is both symbolic and real. The symbol is expressed by terms such as "Quiet American" and "Model Minority". . . . That's the direction the JACL has urged upon [Japanese-Americans] with its motto, "Better Americans in a Greater America." The motto's corollary, also adopted by the JACL was "The Greatest Good for the Greatest Number." the motto and corollary implied that "Better Americans" are more "American," and more "American" was what the majority of Americans were: white Americans. Japanese-Americans were to become as much like white Americans as possible; failing that, they were to be quiet and accommodating.

Id. at 128-29.

The other major group formed to articulate redress purposes was the National Coalition for Redress/Reparations (NCRR) formed in 1980. See HATAMIYA, *supra* note 16, at 142. The various formations and their different strategies to attain redress are beyond the scope of this article. However, like any political movement, different views emerged. For some perspectives of these differences, see HOHRI, *supra* note 16; HATAMIYA, *supra* note 16, at 138-142.

81. H.R. 5977 ("The Lowry Bill") allocated \$15,000 per internee. H.R. 5977, 96th Cong. (1979). This bill was opposed in testimony by Masaoka before the House Judiciary Committee on June 2, 1980. See HOHRI, *supra* note 16, at 61, 76-77.

hearings held on the redress issue on March 18, 1980, Masaoka proposed an alternative-to-redress approach that would not compensate individual victims.⁸² In fact, in a crowning irony, he "argued passionately against redress for renunciants and draft resisters."⁸³

Thus, Congressional solicitude towards the very people whose political views accommodated and, indeed, helped to exacerbate the very injustice that Congress condemned by the redress bill sends an unambiguous message—there are rewards for acquiescence.

In a 1997 conference held at the University of California Los Angeles entitled, "Voices of Japanese American Redress," there were several themes that emerged as reported by the community press. The conference was sponsored primarily by the Civil Liberties Public Education Fund, and its purpose was, as one organizer stated, "to see the broad spectrum of ideas that still exists among the different individuals that were involved in the redress movement."⁸⁴

One theme reported was that the redress movement was an historic grassroots event.⁸⁵ Another theme that emerged was that redress could not have been accomplished without the "patriotism" exhibited by the Japanese-American community in response to their incarceration.⁸⁶ What is disturbing about the reported discussions around this issue was that there did not appear to be any focus on the implications of and the dangers inherent in the notion that despite the clear injustice of the incarceration, congressional redress would not have been possible unless there had been a history of acquiescence to it. Instead, there was only heated discussion on what the appropriate role of the JACL should have been at the time of internment.⁸⁷

82. See HOHRI, *supra* note 16, at 64.

83. *Id.* at 118.

84. Takeshi Nakayama, *Grassroots Lobbying Created Legitimacy for Redress*, Sept. 18, 1997, at 1 (quoting conference organizer Dr. Mitchell Maki).

85. See Martha Nakagawa, *Redress Revisited*, RAJU SHIMPO, Sept. 12, 1997, at A1 (calling it "one of the greatest grassroots effort in modern American history").

86. Representative Robert Matsui stated:

There could be no question about our patriotism after people like Rudy [Tokiwa], who was locked up in camp went to war for the U.S. I don't think redress would have happened without the 442nd, without those who gave up their lives and gave themselves for the war effort while their families were interned.

Takeshi Nakayama, *Rare Victory of Spirit over Numbers*, RAJU SHIMPO, Sept. 16, 1997, at A2.

87. There are reports of a heated exchange between Frank Chin and Fred Hirasuna. Chin took the position that the JACL failed to defend Japanese Americans during incarceration, and Hirasuna took the position that cooperation with the government was the only viable alternative at the time. See Nakagawa, *supra* note 85.

Whatever the merits of each position in that debate, that particular argument obscures and detracts from discussion of a much larger and more troubling issue. Even if one assumes that the JACL accommodationist course was a “better” alternative to outright resistance to the incarceration, the question remains whether that response should be what we as a nation and community celebrate and commemorate when we look back on the experience. The fact that segments of the wartime Japanese-American community either felt or were in actuality forced to cooperate enthusiastically with their captors should be viewed as a source of national tragedy *as well* as a testament to the will to endure and prevail of the Japanese-American community. Shouldn’t the lesson that we as a nation learn from the experience of Japanese-Americans be that when injustice happens we should listen better to the dissenters and the protesters against that injustice? With that as our national lesson, we as a society are better assured that no other community in the future will be forced to humiliate themselves in the face of their oppression in order to survive.

Moreover, deflecting the debate away from that issue to one solely over the wartime role of the JACL forces a defense of its wartime position which reinforces a “superpatriotic” accommodationist stance in the present. In his criticism of Frank Chin’s position that the JACL sacrificed long-term Japanese-American interests by capitulation, Fred Hirasuna, a JACL member from Central California wrote:

Those young people who volunteered or were willingly drafted for military service, in spite of constitutional wrongs committed against them and their families by their own government, showed more real courage and more commitment to the overall cause of Japanese Americans than any other single group, more than the Heart Mountain [draft resister] group.⁸⁸

However, the issue should not be framed in terms of who showed more courage, but why were either forced to make that kind of a choice, and why has Congress decided to celebrate one choice, but not the other. Japanese-Americans should not allow ourselves to be placed in the position of accepting reparations at the same price that we were asked to pay when we were incarcerated in the first place—accommodation of governmental racial injustice. Aside from its other and collateral pernicious effects, it places us back at our original humiliation.⁸⁹

88. Letter to the Editor, *RAFU SHIMPO*, Sept. 27, 1997, at 3.

89. Since my source for the goings on at the UCLA conference are taken from press accounts, I am reluctant to comment upon issues that may have been unaddressed. However, it

IV. THE DANGER OF POLITICAL ACCOMMODATIONISM
FOR ASIAN AMERICANS

The carrot of political reward for political accommodation is a particular temptation for Asian Americans, for Asian Americans find themselves in a peculiar place in the developing racial hierarchy.⁹⁰ If Asian Americans accept their model minority role, it no doubt will come with the "reward" of higher racial status. As one John O. Calmore has explicitly predicted: "I do believe, however, that dominant America will attempt to situate Asians, Pacific Islanders, and Latinos squarely within its efforts to determine who will be 'white' in the twenty-first century."⁹¹

As such, in the search for more sophisticated paradigms to understand and dismantle all forms of racial subordination, it is imperative not to confuse the subtlety of the various paradigms with necessity to focus the primary attack upon the overall operation of white supremacy.⁹²

was reported that although there were discussions of unfinished work, i.e. the cases of Latin American Japanese who were incarcerated, there was no report of discussions about how and whether Japanese-Americans could participate in and support the claims of other groups such as Hawaiians and African Americans for reparations and racial redress. See Nakagawa, *supra* note 85, at A1.

90. For a discussion of the "buffer" role Asian Americans often play in contemporary American racial politics, see *infra* notes 91-93 and accompanying text.

91. John O. Calmore, *Exploring Michael Omi's "Messy" Real World of Race: An Essay for "Naked People Longing To Swim Free,"* 15 LAW & INEQ. 25, 63 (1997) (quoting RACE TRAITOR 275 (Noel Ignatiev & John Garvey eds., 1996)).

92. In the turning away from a black/white paradigm of race relations to a more complex view of racial dynamics, there are attendant political dangers for people of color. See Chris K. Iijima, *Deconstruction, Reconstruction, We-construction: Reclaiming the Politics of Racial Identity and Reflections on the Critique of the Black/White Paradigm*, 29 COL. HUM. RTS. L. REV. 47 (1997).

Professor Eric Yamamoto has articulated an analytical framework for understanding the operation of dominance and subordination outside the old Black/White paradigm without sacrificing the primary focus on white supremacy. See Eric K. Yamamoto, *Critical Race Praxis: Race Theory and Political Lawyering Practice in Post-Civil Rights America*, 95 MICH. L. REV. 821, 891 (1997). According to Professor Yamamoto, situated group power involves four understandings: (1) simultaneity (racial group can be viewed as oppressed and oppressive simultaneously depending on power relationships involved); (2) positionality (focuses on actor's "power position within a given context [to identify its potential as an agent or object of domination, or both]", *id.* at 892; (3) differentiation (how within a system or context of racial domination "where racial minorities are struggling against white domination, a nonwhite racial group acquires and exercises power over another", *id.*; and "differential racialization and differential disempowerment" recognizing that racial groups are racialized differently such that:

varying historical experiences and current socio-economic conditions create different racial images, status and power among racial groups, and those differences contribute to intergroup conflict. Both ideas account for differential racial group agency in the

To meet the exigencies of contemporary American race hierarchy, a more explicitly tiered rather than binary racial system of subordination is developing.⁹³ On one hand, there will be a continued bottom level of subordinated people of color—particularly African-Americans. However, there is a growing middle tier in which a subordinated “model minority,” Asians and some Latinos, will be given some racial and class privileges in return for being used as both a buffer and diversion.⁹⁴

This phenomenon is not without some precedent in the United States.⁹⁵ In research done in 1967 of the relatively large Chinese population (approximately 1200) in the Yazoo-Mississippi Delta the author noted that despite the rigidly segregated nature of the Delta society and the social and economic gulf between dominant whites

construction and maintenance of racial hierarchies and differential racial group responsibility for dismantling those hierarchies. Rooted in critical sociology, differential racialization and disempowerment thus acknowledge that racial groups, even while themselves struggling against domination by others, sometimes, and in complex ways, exercise power over others and that this exercise of power occasionally generates or exacerbates interracial conflict.

id. at 892-93; and (4) dominance/transformation (“The extent of racial group’s power over another is determined in part by its alignment with other . . . actors . . .”), *id.* at 893. Thus, power “generates racial harms for which the more powerful group bears responsibility” and transformation “reflects an acceptance of responsibility and affirmative steps toward interracial healing.” *Id.* at 894.

93. See Yamamoto, *supra* note 15, at 238 n.67 (referring to Professor Mari Matsuda’s fear that Asian Americans could reinforce a racial hierarchy “with white on top, black at bottom, and yellow in the middle”).

94. See Natsu Saito Jenga, *Finding Our Voices, Teaching Our Truth: Reflections on Legal Pedagogy and Asian American Identity*, 3 UCLA ASIAN PAC. AM. L.J. 81, 83-84 (1995) (noting how the “model minority” myth places Asian Americans in a racial hierarchy below European Americans and above African Americans and Latino/Latinas); see also Neil Gotanda, *Multiculturalism and Racial Stratification*, in MAPPING MULTICULTURALISM 238, 240 (Avery F. Gordon & Christopher Newfield eds., 1996) (African-Americans measured against model minority myth and thus “monitored” by Asian-American stereotype).

Indeed, as Frank H. Wu has stated:

Under some circumstances, Asian Americans have been granted the status of honorary whites. In anomalous instances, whites may accept Asian Americans as white, despite de jure discrimination. Official school desegregation, for example, could be ignored to permit Asian Americans to attend a white institution. Nevertheless, there do not appear to be many, if any at all, court cases characterizing Asian Americans as whites, where that characterization favors the individual thus identified.

Frank H. Wu, *Neither Black nor White: Asian Americans and Affirmative Action*, 15 THIRD WORLD L.J. 225, 248 (1995) (footnotes omitted).

95. See *infra* notes 111-16 for a discussion of Asians in South Africa under apartheid. It is worth noting that Japanese businessmen were accorded a “honorary white” status due to Japan’s importance in South Africa economy. See, e.g., Roger Thurow, *This Time, Japan Would Rather Stay No. 2*, WALL ST. J., Aug. 12, 1987; Jenga, *supra* note 94, at 93 n.26. Of course, the very notion of an “honorary white” serves to further codify the notion of white supremacy since “it promotes whiteness as an ideal.” Frank H. Wu, *From Black to White and Back Again*, 3 ASIAN L.J. 185, 207 (1996) (reviewing WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE)).

and subordinate blacks, the Chinese had “managed to leap that chasm.”⁹⁶

Originally classed with blacks, they are now viewed as essentially “white.” The color bar stands, but they have crossed over it. Moreover, in some communities they bridge it anew every day, for they still stand in a sense as an intermediate group. Negroes do not consider them exactly white; Caucasians do not consider them black. They are privileged and burdened with an ambiguous racial identity.⁹⁷

Moreover, the entire trend toward a separate “multiracial” racial census category echoes this “new” racial structure and assumes a number of false premises—that there is a “pure” African-American or Latino race that is “unmixed” by other races, and that individuals are free to assign themselves a racial designation unaffected by how they are perceived in larger society.⁹⁸

Many children of mixed race couples are “raced” as the darker parent.⁹⁹ The political effect of such a new category is to create an illusion that racism is not part of a highly sophisticated system of dominance and subordination, but simply a matter of individualized self-naming. This further fractionalizes and dilutes the coming majority of

96. JAMES W. LOEWEN, *THE MISSISSIPPI CHINESE: BETWEEN BLACK AND WHITE* 2 (2d ed. 1988).

97. *Id.*

98. See Jacinta Ma, *Census 2000: Census 2000 Issues Heat Up*, NAPALC REV., Spring 1997, at 3 (reporting on H.R. 830 requiring federal agencies to provide opportunity for respondents to specify “multiethnic” or “multiracial”); see also Steven A. Holmes, *Panel Balks at Multiracial Census Category*, N.Y. TIMES, July 9, 1997, at A12 (reporting that while seven states have a multiracial category and nine other states are considering the issue, a federal task force will recommend not to include a multiracial category on federal forms such as the Census Bureau forms, but will recommend that an individual of mixed racial parentage may self-identify and check off several races simultaneously on federal demographic forms). President Clinton has directed his “advisory panel” on race to focus on multiracialism rather than black/white relations. See James Bennet, *Clinton in 2 Speeches, Urges Racial Healing*, N.Y. TIMES, July 18, 1997, at A20. However, the critique of the traditional black/white paradigm of race relations has been used by some viewpoints to divert attention away from the operation of white supremacy. See Iijima, *supra* note 92.

99. Indeed, the young golf sensation Tiger Woods is usually referred to as being African-American irrespective of the fact that his mother is Thai. See, e.g., Richard E. Lapchick, *Lessons of Tiger Woods Will Not Be Easy Ones*, N.Y. TIMES, May 18, 1997, § 8, at 8 (comparing Wood’s victory in the Masters to Jackie Robinson’s breaking of the professional sports color barrier). However, to the extent that there is any acknowledgement of his mixed heritage at all it is still bounded by racial stereotypes. In his essay, Lapchick reports that radio call-in talk shows or newspaper articles have attributed Woods’s intelligence, family orientation, and his sense of racial perspective in his acknowledgement of the sacrifices and contributions of pioneering African-American golfers solely to his being half Asian! See *id.*

has taken these fears and codified them in its racial jurisprudence by treating whites as a potentially victimized group to be protected.¹⁰⁷

White fears of declining power are illustrated by the recent voter initiatives in California curtailing benefits to immigrants and eliminating affirmative action.¹⁰⁸ In Texas, where people of color are rapidly gaining numerical superiority, the elimination of racial preferences at the University of Texas Law School is a graphic indication of a desire to return to racial segregation, albeit in a more sophisticated way than during the Jim Crow era.¹⁰⁹ Given that the explicit forms of Jim Crow

107. See Alexandra Natapoff, *Trouble in Paradise: Equal Protection and the Dilemma of Interminority Group Conflict*, 47 STAN. L. REV. 1059 (1995). Natapoff explores Justice O'Connor's plurality opinion in *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989), to show how it casts the factual circumstances simply as multiple racial groups competing as equals for power and wealth, recasting the notion of "minority status" as a "temporary numerically inferior presence in a given locale, rather than a group subject to historic discrimination and in need of systemic remedy." *Id.* at 1075. Natapoff also points out that the Powell *Bakke* opinion recasts "minority" from an historical and political notion of a disadvantaged group to an ahistorical numeric phenomenon. See *id.* at 1071.

108. In *Coalition for Economic Equity v. Wilson*, 122 F.3d 692 (9th Cir. 1997), *cert. denied*, 118 S. Ct. 397 (1997), a Ninth Circuit panel held that the California Civil Rights Initiative ("Proposition 209"), banning the use of race, gender, color, ethnicity or national origin in public employment, education or contracting, did not violate the Fourteenth Amendment's Equal Protection Clause. See *id.* Using the familiar "colorblind" rationale, the court held that when "a state prohibits all its instruments from discriminating against or granting preferential treatment to anyone on the basis of race or gender, it has promulgated a law that addresses in neutral-fashion race-related and gender-related matters." *Id.* at 707. For a description of an effect of anti-affirmative action measures in California see *infra* note 109 and accompanying text.

Proposition 187 was a 1994 California ballot initiative that denied state benefits and services to undocumented immigrants. Enforcement of major provisions was enjoined in *League of United Latin Citizens v. Wilson*, 908 F. Supp. 755 (C.D. Ca. 1995) (holding that sections of the initiative attempted to regulate immigration and were preempted by federal law).

109. After the Fifth Circuit Court of Appeals declared unconstitutional its admissions policy which considered the race of an applicant, only three African Americans will be in the 1997 first year class at the University of Texas Law School of 500. See Peter Applebome, *Minority Law School Enrollment Plunges in California and Texas*, N.Y. TIMES, June 28, 1997, at A1.

At the University of California at Berkeley after the Board of Regents ban on affirmative action in 1995, there is only one African American entering student in the fall 1997 entering class of 270. See *id.* At UCLA Law School the projected entering number of African Americans is 10, a decline of almost 50% from the year before. See *id.* Indeed, at Berkeley, one Black student is a decline from 20 the previous year; at Texas the decline is from 21 to three. See *id.* There is also a significant decline in the number of Latino entering students at both the law schools at Berkeley and the University of Texas. See *id.* These figures underscore the prediction that the abandonment of race as a factor in law school admission would drastically affect the diversity of law schools, barring potential students of color who would both graduate and successfully pass the bar. See Linda F. Wrightman, *The Threat to Diversity in Legal Education: An Empirical Analysis of the Consequences of Abandoning Race as a Factor in Law School Admission Decisions*, 72 N.Y.U. L. REV. 1, 52 (1997).

In a related matter, anti-Asian violence increased 80% from 1994 to 1995 in Southern California and 10% in Northern California, a state where the initiatives against immigration have

segregation are not politically viable (at least not yet), the imperative of continued racial subordination by an increasingly isolated white minority will simultaneously require sophisticated mechanisms of racial stratification and control, and the maintenance of stereotypes to monitor and suppress dissatisfaction by those subordinated. This increased sophistication is played out on both an ideological and political level.

Apartheid looked "to a state based upon democratic-aristocratic concepts, that is, of democratic processes within the fold of the white race."¹¹⁰ Thus, if a traditional caste system is marked by vertical segregation, apartheid was marked by both vertical and horizontal (territorial) segregation.¹¹¹ Apartheid's over-all scheme was to "reduce the area of intercourse between the non-European races as well as between them and the white race."¹¹² This strict segregation between populations was to provide conditions for races to develop "independently" of each other.¹¹³

had success. See NATIONAL ASIAN PACIFIC AMERICAN LEGAL CONSORTIUM, *AUDIT OF VIOLENCE AGAINST ASIAN PACIFIC AMERICANS: THE CONSEQUENCES OF INTOLERANCE IN AMERICA* 11 (1995). Hate crimes against Asian Americans in the United States rose 17% in 1996. See Aurelio Rojas, *Hate Crimes on Rise Against Asian Americans*, S.F. CHRON., Sept. 9, 1997, at A2.

110. Dvorin, *supra* note 101, at 58.

111. See *id.* at 59.

112. *Id.* at 94. There were some attempts to classify based upon appearance: European by appearance and social circle, African by appearance and social circle, etc. See Wilmot G. James, *Group Areas and the Nature of Apartheid* 26 (American Bar Foundation Working Paper Series #9214) (1992). Spouses of mixed couples were classified "downward" and only those coloured who "passed" and had married whites were classified "upward" as white. See *id.*

113. See Dvorin, *supra* note 101, at 151. This is not to suggest that other status categories such as class or gender are not relevant and in some cases determine the ordering of hierarchy either in apartheid South Africa or the United States. However, in apartheid South Africa as well as in the contemporary United States "[r]ace, under certain conditions may become the content of class struggle . . . [since] [r]ace [may be] the modality . . . in which class is lived, the medium through which class relations are experienced, and the form in which it is appropriated . . ." HAROLD WOLPE, *RACE, CLASS & THE APARTHEID STATE* 52 (1988) (quoting Stuart Hall).

Wolpe describes and critiques various political theories in apartheid South Africa: "race reductionist theories" which assume "within a racial group there is a uniform, common and equal investment in the racial ordering of the social system," *id.* at 12; "economic reductionist theories" which define interests solely in terms of class interests which in turn are entirely defined by the economic relations of production and in which race is merely an external instrument for the reproduction of class interests, *id.* at 14-15; and "colonialism of a special type" or "internal colonialism" which divides society into a category of white subjects and a subordinate category of black subjects and in which there are internal class divisions within each category but the "overriding factor is the racial division," *id.* at 30.

It is beyond the scope of this article to articulate comprehensively the consequences of the interstices of different relationships. However, it is enough to recognize the importance of

color into more disparate constituencies in which there are only "minorities"—whites then becoming the largest one.¹⁰⁰

This "informal" tiering, of course, is highly reminiscent of the rigidly tiered structure of the now dismantled South African apartheid.¹⁰¹ Although to many of my colleagues of color the news may be old, and despite the outcry that the proposition might occasion by some of my other colleagues, it is becoming increasingly clear that as South Africa has begun the arduous struggle to dismantle the effects of its apartheid history, America has embarked upon the creation of a more subtle, sophisticated brand of it for the new millennium. Moreover, Asian Americans are a linchpin of it.

Of course, yielding to the temptation to "soundbite" America's racial climate as apartheid comes with attendant risks. As former Judge Leon Higginbotham warned about the inherent difficulties in comparing the approach to race in two different countries: "[T]here is a high risk of superficiality in comparing two separate countries during different eras. Indeed, to compare race issues in the United States and South Africa over the course of two hundred years is to enter a potential quagmire that few scholars have been willing to explore."¹⁰²

There is no attempt here to match exactly the two nations' approaches to racial hierarchy. Instead, simple analogies will illustrate the points. However, it should be emphasized that the single greatest difference between the two countries from Higginbotham's perspective may not be as true in the near future as it is now:

100. Neil Gotanda discusses how the model minority image "carries an implied racial context of racial stratification and that there are distinct ideological messages implicit within the model minority image and racial stratification." Neil Gotanda, *Asian American Rights and the "Miss Saigon Syndrome,"* in *ASIAN AMERICANS AND THE SUPREME COURT* 1087, 1088 (Hyung-Chan Kim ed., 1992), at 1088. The ideological message is articulated as follows:

Under the model of racial stratification . . . the economic disparities between Black and White . . . do not appear to be a genuine social problem. The presence of more successful Asian Americans and Latinos, located between Whites and African Americans, proves that the social and economic barriers can be overcome and are not rooted in "race." Thus racial stratification serves to justify and legitimate existing racial disparities.

Id. at 1091.

101. See, e.g., EUGENE P. DVORIN, *RACIAL SEPARATION IN SOUTH AFRICA* (1952).

102. A. Leon Higginbotham, Jr., *Racism in American and South African Courts: Similarities and Differences*, 65 N.Y.U. L. REV. 479, 489 (1990) [hereinafter *Racism in Courts*]. See also A. Leon Higginbotham, Jr., *De Jure Housing Segregation in the United States and South Africa: The Difficult Pursuit for Racial Justice*, 1990 U. ILL. L. REV. 763, 775 (1990) [hereinafter *De Jure Housing Segregation*] ("Although there are similarities in the racial histories of the United States and South Africa, they must be considered in light of the substantial differences . . . [among them] the two countries' populations, demographics, economics, religions, cultures, and governments.").

Perhaps the single most significant difference is the fact that from the inception of the United States, whites have constituted a numerical majority and have acquired a predominance of economic and political power. . . . [such that the] accommodation of the legitimate demands of blacks would not result in a substantial diminution of their power.¹⁰³

In fact, after the year 2050, Blacks, Asians, Latinos, and Native Americans will attain a majority population.¹⁰⁴ Whites in America are already visualizing themselves as a racial minority.¹⁰⁵ They fear their status is eroding and that people of color are usurping their traditional positions of power and privilege.¹⁰⁶ The Supreme Court

103. Higginbotham, *De Jure Housing Segregation*, *supra* note 102, at 775. Conversely, given the minority of South African whites, accommodating the demands of black South Africans would "result in the elimination of the white monopoly on political and economic power." Higginbotham, *De Jure Housing Segregation*, *supra* note 102, at 776.

104. See, e.g., Brad Edmondson, *The Minority Majority in 2001*, AM. DEMOGRAPHICS, Oct. 1996, at 16; Ramon G. McLeod, *Census Shows a Turning Point—Hispanics Increasing the Fastest*, S.F. CHRON., Mar. 27, 1996, at A14 (citing a 1996 United States Census Bureau report that estimating that at some point in the 21st century the non-Hispanic white population will be a minority).

105. While the actual percentage of white population in the United States is 74%, whites believe the percentage is under 49.9%. While the actual figure for blacks is about 12%, the white estimation was about 24%. See Priscilla Labovitz, *Immigration—Just the Facts*, N.Y. TIMES, Mar. 25, 1996, at A15.

106. See Richard Morin, *A Distorted Image of Minorities; Poll Suggests That What Whites Think They See May Affect Beliefs*, WASHINGTON POST, Oct. 8, 1995, at A1. A telephone poll, conducted by the *Washington Post*, the Kaiser Family Foundation, and Harvard University, interviewed 1,970 randomly selected Americans, including 802 whites, 474 blacks, 352 Asians and 252 Latinos. The survey found that 58% of whites felt that blacks had jobs of equal quality or better than those held by whites (46% of whites felt that blacks had jobs of equal quality to those of whites, 6% said blacks had jobs that were "a little better" than whites and 6% stated that blacks held jobs that were "a lot better").

Moreover, fears that immigration is producing economic hardship for the United States are unfounded. Immigration adds approximately \$10 billion to the American economy due to an increased labor supply and decreased prices. See Robert Pear, *Academy's Report Says Immigration Benefits the U.S.*, N.Y. TIMES, May 18, 1997, at A1. Any negative effects such as depressed wages or increased competition for low wage jobs were "relatively small." *Id.* Moreover, "immigration does not have a decisive influence on the economic opportunities of blacks. *Id.* at A24. While in such states as New Jersey and California immigration may account for some increased taxes, this is offset by immigrants helping to "pay the public costs of the aging baby boom generation." *Id.* Thus, "the vast majority of Americans are enjoying a healthier economy" as a result of immigration. *Id.* at A1. In fact, the assumption of a large influx of undocumented immigrants from Mexico has been dramatically overblown. See Sam Dillon, *U.S.-Mexico Study Sees Exaggeration of Migration Data*, N.Y. TIMES, Aug. 31, 1997, at A1 ("The first formal migration study by the American and Mexican governments has concluded that the number of undocumented Mexican workers who have settled in the United States in this decade is far lower than some politicians have suggested, only about 105,000 a year").

Mixed race Coloureds (descended predominantly from European-slave unions) traditionally kept themselves apart from the Native population, and prior to the Nationalist victory in 1948 those who lived in Cape Province actually had certain advantages over native Africans such as no residential segregation, the ability to own property, the right to vote subject to certain conditions, and the right to hold elective local offices, although they suffered similar restrictions to Black Africans in other provinces.¹¹⁴ Although Coloureds were usually discriminated against in employment and social practice in the vast majority of South Africa, they were seen traditionally as an "appendix of the European population" and an "intermediate nation" whose interests were more "closely allied" to those of Europeans than other sections of the population.¹¹⁵ After the Nationalist victory in 1948, even more restrictions were imposed on the Coloureds, even in Cape Province, and their interests became no longer linked to those of the Europeans.¹¹⁶

The view toward South African Asians under apartheid (Indians, Malays, Chinese) was that no matter what their status, they were not considered an "indigenous portion of South Africa," and the long range goal was to reduce the population.¹¹⁷ Thus, there was an attempt to lower the status of the Asian population so as to "offer no threat to white supremacy" in the economy of the South African nation.¹¹⁸ The Nationalists allowed the Indian population to own land

assessing the relative position of one's group with respect to another in any given political context. See Yamamoto, *supra* note 92, at 891 (acknowledging the "capacity of racial groups, amid changing racial demographics and socio-economic structures, to be simultaneously oppressed and oppressive, liberating and subordinating").

114. See Dvorin, *supra* note 101, at 61-63.

115. *Id.* at 63-64.

116. See *id.* at 64. It is worth noting that before 1948, there was some view to allow limited economic and political participation for Coloureds, and had that been successfully done "the racial balance would have been significantly altered." GEORGE M. FREDRICKSON, *WHITE SUPREMACY: A COMPARATIVE STUDY IN AMERICAN AND SOUTH AFRICAN HISTORY* 272 (1981). It was the alienation of Coloureds and Asians through the harshness of apartheid, and thus the unity among the nonwhite groups in opposition to apartheid, that forced whites to extend civil rights to all nonwhites. See *id.* at 273. Indeed, it has been speculated that if a more sophisticated approach to racial hegemony had been taken by South African whites, South Africa as a "racially diverse nation of essentially European culture (with the whites securely entrenched as a major population group) would have been in a strong position to survive indefinitely . . ." *Id.*

117. See Dvorin, *supra* note 101, at 157-58.

118. *Id.* at 162.

putting them on a higher economic level than Africans, but the Indians had no franchise of any form, giving them an inferior political status.¹¹⁹

This distinction had the desired divisive political consequences. On the one hand, the Asian population could choose between regarding themselves apart from the other non-European segments and thus demand equality for themselves alone or could have regarded their issue as involving all non-Europeans.¹²⁰ On the other hand, Indians were resented due to exploitation by Indian traders in Native areas in terms of high prices and inferior goods.¹²¹ In 1949, rioting Africans in Durban targeted Indian property and as many as 142 Indians were killed.¹²² Thus, the racial tiering under apartheid simultaneously served to codify the white minority's supremacy as well as to divide opposition by people of color to it.¹²³

119. See *id.* at 161.

120. See *id.* at 166.

121. See *id.* at 169.

122. See *id.* at 168. A similar phenomenon happened in the Mississippi Delta after the assassination of Dr. Martin Luther King, Jr. in 1968. Chinese stores in the Delta's black communities were hard hit. See Loewen, *supra* note 89, at 174-75. The author notes that Chinese stores were "safer" than white stores, since Chinese had less access to police protection. See *id.* at 176. Moreover, the targeting of Chinese merchants had another motivation:

Finally, it may be that the Chinese as a group are now singled out because Negroes are particularly enraged by the irony of their gain in status. White grocers were always white. Chinese, however, were once in approximately the same position as blacks, were once brothers in oppression. . . . Blacks may feel a sense of betrayal in the action of the Chinese.

Id.

This sentiment is echoed again thirty years later in analyses of the violent discourse between the African-American and Korean-American communities:

The African American community continues to struggle against a status quo legal narrative—white supremacy. The struggle at present is articulated as a violent discourse, and given the recent presence of Koreans in minority markets, African American violence inevitably envelops Koreans. However, Koreans per se are not the primary target. Rather, African Americans attack Koreans as symbols of "entrepreneurship." . . . African Americans have suffered a long history of racial injustice and economic inequality. As a consequence African Americans have reacted negatively to Koreans not only because Koreans have attained greater economic power, but because they present symbols of opportunities for economic success not available to African Americans.

Reginald Leamon Robinson, "The Other Against Itself": Deconstructing Violent Discourse Between Korean and African Americans, 67 S. CAL. L. REV. 15, 41-42 (1993). See also Lisa C. Ikemoto, *Traces of the Master Narrative in the Story of African American/Korean American Conflict: How We Constructed "Los Angeles,"* 66 S. CAL. L. REV. 1581 (1993).

123. See Stephen Ellmann, *Law and Legitimacy in South Africa*, 20 LAW & SOC. INQUIRY 407 (1995). Ellmann makes the observation that although Blacks, Coloureds, and Asians were all victimized by apartheid, Coloureds and Asians were "less acutely victimized," and when it came time to shape a new order, Coloured and Asians gave substantial support to the National Party (formerly the "all-white champion of apartheid"), and the majority of Africans gave their support to the African National Congress. *Id.* at 432-33. It is interesting to note that in a recent *New York Times* article, the author's questions about racism "split along racial and ethnic lines

In the present day United States, as racial tiering becomes more of a political necessity for white minority hegemony, there is a not-so-subtle ideological campaign developing that focuses on two prominent themes: (1) the national "character" is inextricably bound with certain racial and cultural normative assumptions; and (2) since racial identity is essentially and solely an individual's choice, racism is cognizable only if it is explicitly practiced upon individuals. However, the reality is, as one commentator has expressed it:

Regardless of how truly one is able to express one's personal identity, structural racism in U.S. society will persist in forcing people into one of the five boxes of the racial/ethnic pentagon [Black, White, Asian, Native American, Hispanic] for the foreseeable future.

* * * *

The fact that individual identity is vitally important does not preclude the fact that societal identity of groups is also important. Because the two are not necessarily the same, it logically follows that they do not necessarily have to agree. The way in which a person defines himself or herself is distinct from the way which society defines him or her, although both have important repercussions and ramifications. We gain nothing but confusion by trying to blend the two concepts or obfuscate their distinctness.¹²⁴

Indeed, the fact remains "[w]hites have the *option* of ethnic identity, whereas people of color do not."¹²⁵ Similarly, with regard to the former theme, the operating normative principle has become one in which racism has "disappeared except as . . . 'imagined' by its subordinated subjects who [continue] to 'suffer' in an unbelievable world—a color blind world of white innocence."¹²⁶ Indeed, as opposed to the cumbersome mechanisms of apartheid and Jim Crow,

[where]. . . African Americans tended to see the problem in much starker terms than did whites, Asian-Americans and Hispanic respondents. . . ." Steven A. Holmes, *Many Uncertainties About President's Racial Effort*, N.Y. TIMES, June 16, 1997, at A16.

124. Nancy A. Denton, *Racial Identity and Census Categories: Can Incorrect Categories Yield Correct Information?* 15 LAW & INEQ. J. 83, 97 (1997).

125. *Id.* at 91.

126. Calmore, *supra* note 91, at 28 (quoting John O. Calmore, *The Case of the Speluncean Explorers: Contemporary Proceedings*, 61 GEO. WASH. L. REV. 1764, 1776 (1993)).

Indeed, the colorblind myth confuses the ideal of an end to racial hierarchy with what already exists. See Charles R. Lawrence, III, *The Epidemiology of Color-Blindness: Learning To Think And Talk About Race Again*, 15 B.C. THIRD WORLD L.J. 1, 6 (1995). In fact, "denial is a pervasive symptom of contemporary American racism." *Id.* at 8. Of course, the denial of reality merely perpetuates the condition of racial subordination. See Neil Gotanda, *A Critique of "Our Constitution Is Colorblind,"* 44 STAN. L. REV. 1, 6 (1991) ("Nonrecognition [of race] fosters the

"[t]oday's racism is state-of-the-art."¹²⁷ It plays upon the old fears, yet simultaneously legitimatizes and masks old white supremacist politics by reducing race to mere ethnicity ("in the end we're all hyphenated Americans"), and by dressing up old concepts of white supremacy in categories of individualized opportunity, meritocracy, and universalism by appealing to "traditional values" and "individual responsibility."¹²⁸

Indeed, "traditional values" are given a decidedly racial spin: "As late as 1950, somewhere up to nine out of ten Americans looked like me. That is, they were of European stock. And in those days, they had another name for this thing dismissed so contemptuously as 'the racial hegemony of white Americans.' They called it 'America.'"¹²⁹

This open fear of the loss of racial hegemony is by no means a radical fringe notion. It is simply the more decayed underbelly of colorblind egalitarian propaganda—the "Willie Horton" appeal to white

systematic denial of racial subordination and the psychological repression of an individual's recognition of that subordination, thereby allowing such subordination to continue.") (footnote omitted)).

127. Calmore, *supra* note 91, at 28.

128. *Id.* at 52-53.

129. PETER BRIMELOW, *ALIEN NATION: COMMON SENSE ABOUT AMERICA'S IMMIGRATION DISASTER* 59 (1995). Brimelow understands that race has always been defining in American politics. *See id.* at xvii ("[T]he racial and ethnic balance of America is being radically altered through public policy. This can only have the most profound effects. *Is this what Americans want?*"). He has no illusions that this nation is or should be colorblind. *See id.* at 10 ("[M]any modern American intellectuals [are] just unable to handle a plain historical fact: that the American nation has always had a specific ethnic core. And that core has been white."). Thus, his fears are expressly about losing racial hegemony. *See id.* at 56 ("For the first time, virtually all immigrants are racially distinct 'visible minorities.' They come not from Europe. . . . And, as we have seen, they are coming in such numbers that their impact on America is enormous—inevitably within the foreseeable future, they will transform it"). And what is most telling is the appeal to his own sense of "family values"—the continuing legacy of white privilege for his children:

My son, Alexander, is a white male with blue eyes and blond hair. He has never discriminated against anyone in his little life. . . . But now public policy discriminates against him. The sheer size of the so-called "protected classes" that are now politically favored, such as Hispanics, will be a matter of vital importance as long as he lives. And their size is basically determined by immigration.

Id. at 11.

Brimelow recounts how he read a newspaper story in which a Chinese-American college student, when asked what grade she would give America, replied that she "would give it an incomplete." He continues: "Really. Well, my twin brother and I did have to grade America. . . in the summer of 1967. We gave it an A+. And we still give it an A+. . . what's left of it. And—if only for my son Alexander's sake—I'd like it to stay that way." *Id.* at 221.

supremacy.¹³⁰ Its ability to foster fears of an irresistible tidal wave of color inundating the country is evident by noting that in the first months alone of 1997, four bills and one resolution were submitted to the United States Congress to declare English as the nation's "official language."¹³¹

Moreover, the previously "neutral" themes of individual meritocracy have become less racially opaque.¹³² The far right has "legitimate[d] its revived racial politics in a way that did not simply reassert white identity as inherent white supremacy in order to reestablish America as a white country" but has instead "hijacked" the notion of colorblindness for its own racial project and set the stage for the development of new right racial agendas playing on the same fears.¹³³

130. See Calmore, *supra* note 91, at 51. Calmore astutely notes that Ronald Reagan "silently incorporated aspects of the far right's racial project in order to broaden his support base. He recognized that the far right's appeal extended to people who would normally disassociate themselves from extremism." *Id.*

131. On January 7, 1997, the "English Language Empowerment Act" was introduced to declare English as the official language of the United States government (section 161) and requiring that all written communication of official government business be in English (section 163(a)). H.R. 123, 105th Cong. §§ 161, 163(a) (1997).

On February 4, 1997, House Resolution 37 was introduced in the House of Representatives proposing a Constitutional Amendment establishing English as the official language of the United States to be "used for all public acts . . . of the Government of the United States and the governments of the several States." H.R.J. Res. 37, 105th Cong. § 1 (1997).

On February 5, 1997, House Bill 622, the "Declaration of Official Language Act of 1997," was introduced in the House which was essentially the same as House Bill 123, but also repealing bilingual voting requirements. H.R. 622, 105th Cong. (1997).

On February 13, 1997, Senate Bill 323, the "Language of Government Act of 1997," was introduced in the Senate which mandated English but allowed "terms of art" such as "E Pluribus Unum" to grace government documents. S. 323, 105th Cong. § 165(2)(F) (1997).

On March 11, 1997, House Bill 1005, the "National Language Act," was introduced in the House which looked to repeal not only bilingual voting requirement (section 4), but looked to terminate bilingual education programs as well (section 3). H.R. 1005, 105th Cong. §§ 3, 4 (1997).

In addition, at least eighteen states have adopted some variation of an "official English" law. See *Yniguez v. Arizonans for Official English*, 69 F.3d 920, 927 n.11 (9th Cir. 1995) (listing Arizona, Alabama, Arkansas, California, Colorado, Florida, Georgia, Hawaii, Illinois, Indiana, Kentucky, Mississippi, Nebraska, North Carolina, North Dakota, South Carolina, Tennessee, and Virginia).

132. See RICHARD J. HERRNSTEIN & CHARLES MURRAY, *THE BELL CURVE: INTELLIGENCE AND CLASS STRUCTURE IN AMERICAN LIFE* (1994).

133. Calmore, *supra* note 91, at 50 n.145, 51-52.

In the infamous book *The Bell Curve*, after attempting to order racial intelligence, the authors intone that since inequality of intelligence is a reality, "[i]t is time for America once again to try living with inequality, as life is lived. . . ." ¹³⁴

It is not entirely coincidental that as some call for "independent development within neighborhoods," racial segregation in residential communities still is rampant across the country, particularly in urban areas. ¹³⁵ Indeed, given the recent anti-immigrant and anti-affirmative

134. HERRNSTEIN & MURRAY, *supra* note 132, at 551. In terms chillingly reminiscent of classic apartheid political theory, they expressly assert the notion that a "natural aristocracy" governing those less equally intellectually endowed is a principle of the Founders. *Id.* at 530-31. What is remarkable to me about this statement is not that as slaveholders many of the Founding Fathers must have believed in a natural order of human hierarchy, but rather the baldness of its assertion. Herrnstein and Murray end with a thinly veiled paean to the time-honored apartheid tradition of separate parallel development of the races:

Cognitive partitioning will continue. It cannot be stopped, because the forces driving it cannot be stopped. But America can choose to preserve a society in which every citizen has access to the central satisfactions of life. Its people can, through an interweaving of choice and responsibility, create valued places for themselves in their worlds. They can live in communities—urban or rural—where being a good parent, a good neighbor, and a good friend will give their lives purpose and meaning. They can weave the most crucial safety nets together, so that their mistakes and misfortunes are mitigated and withstood with a little help from their friends.

Id. at 551. Indeed, their political solution is a return to the idea of localized government in which everybody, it is assumed, knows their "place":

A wide range of social functions should be restored to the neighborhood when possible and otherwise to the municipality. The reason for doing so, in the context of this book, is not to save money, not even because such services will be provided more humanely and efficiently by neighborhoods (though we believe that generally to be the case), but because this is one of the best ways to multiply the valued places that people can fill.

Id. at 540.

135. See Denton, *supra* note 118, at 85 (noting that current levels of segregation for African-Americans in large cities remain near their all-time high and show few signs of decreasing (citing DOUGLAS S. MASSEY & NANCY A. DENTON, *AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS* 222 (1993)).

Denton and Massey reach three conclusions: (1) residential segregation continues unabated in the largest metropolitan black communities and that this spatial isolation cannot be attributed to class; (2) whites accept open housing only in principle but not in practice; (3) discrimination in housing against blacks is widespread and at high levels in urban housing markets. See MASSEY & DENTON, *supra*, at 109. They find that blacks are more likely to be tolerated by whites as neighbors only when they constitute a small percentage of the population. As such, "where racial composition is such that open housing can be implemented without threatening white preferences for limited contact with blacks, desegregation should occur; but in areas where relatively large numbers of blacks imply a high degree of black-white mixing under an open market, racial segregation will be maintained." *Id.* at 111. The significance of race was striking when applied to Caribbean Hispanics. Denton and Massey found that average levels of segregation among Hispanics were dictated by whether they were white, mixed-race, or black in appearance. See *id.* at 112-114. The authors conclude that "[w]hen it comes to housing and residential patterns, therefore, race is the dominant organizing principle. No matter what their ethnic origin, economic status, social background, or personal characteristics, African Americans continue to be denied full access to U.S. housing markets." *Id.* at 114.

action climate of white America in the 1990s, the ugly ideology of those like Herrnstein, Murray, and Brimelow cannot be written off as simply that of marginal right wing fanatics. Moreover, what is so sophisticated about the approach is its lack of readily observable structure. The racial and gender ceiling is glass, the bars are tantalizingly see-through, and the enforcement of status is through the vague uncertainties of "colorblind" judicial opinion and "neutral principle" rather than through the crude truncheon of codes and statutes. Yet, the gap between white and color and between rich and poor continues to accelerate apace.¹³⁶

Perhaps the most tragic consequence of acquiescence to racial injustice is its effect on those who acquiesce. The failure to resist the imposition of inferior status gradually becomes an acceptance of the logic of it. In April, 1942, on behalf of the JACL, Masaoka sent a letter to Milton Eisenhower, the director of the War Relocation Authority, outlining his suggestions for WRA policy. Among these suggestions were some related to adjustment after the war. Masaoka wrote "We do not relish the thought of 'Little Tokyos' springing up in these resettlement projects, for by doing so we are only perpetuating the very mannerisms and thoughts which mark us apart, aside from physical characteristics. We hope for a one hundred percent American community."¹³⁷

Fairfax County, Virginia, one of the wealthiest communities in the nation (with \$70,000 annual household income which is twice the national median), recently cut welfare benefits, blocked expansion of subsidized housing, and made it more difficult for unemployed to get into public housing in the county. These actions most affect recent immigrants from Latin America, Asia, and Africa. See Eric Lipton, *Discouraging the Poor in Fairfax; County Officials Cut Benefits as Disincentive*, WASH. POST, June 29, 1997, at A1 (reporting county officials cutting benefits as a disincentive to potential low income residents).

136. See Rich Thomas, *A Rising Tide Lifts the Yachts*, NEWSWEEK, May 1, 1995, at 62D. The article reports that the wealth of 1% of U.S. households climbed from 20% of the aggregate of the country's private assets in the mid-1970s to 35.7% in 1989. In 1969, the top 20% of American households received 7.5 times the income of the bottom 20%, but by 1992, it was 11 times the income. See also Barbara Vobejda, *Black-White Income Gap Widens over Two Decades*, WASH. POST, Sept. 15, 1994, at A14 (stating that the median income among black families was 54% of that for white families in 1992, but that it was 61% in 1969).

137. Lim, *supra* note 68, at 8. Indeed, of Masaoka's "colorblind" assumptions of a postwar American reality, Weglyn writes:

Perhaps nothing had influenced Nisei so profoundly as wartime accusations of their "unassimilability," innuendos that it was their clannishness and propensity to cluster which had helped to bring on the calamity. . . . The goal of jettisoning their Japanese-ness and assimilating into the larger society became a near obsession for them in the early postwar years. Many forced themselves into resettling in unknown parts of the country, cutting themselves adrift from the tight-knit society in which they and their parents had once found security.

Thus, the carrot of model minority status for Asian Pacific Americans will not only be useful as a sword against other people of color. It will also serve as a dagger in the heart of the self-esteem of all Asians who accept its "benefits" because the weapon may only be wielded in the defense of the racial status quo.

CONCLUSION

This is a dangerous Orwellian era of racial backlash, when virulent right-wing ideology is dressed up and passed off as "conservative" politics. It is a time when attempts to roll back the clock to Jim Crow are named "civil rights initiatives." It is a period in which conservative judicial activism in a naked attempt to ossify the society's racial and economic stratification is done in the name of "strict judicial construction." We live in a time when there is a highly charged battle cry against "political correctness." However it is shouted by those who would use the code words of the right—"less government," "local autonomy," "colorblindness," "traditional values," "personal responsibility," "neutral principles," "traditional American culture"—as markers of acceptable political and personal morality.

Asian Pacific Americans are at a crossroads in terms of where they will stand in the coming era of race relations—either to be used to solidify the control of white supremacy or to be a force standing against it. In the justice that was rendered by national redress for incarceration, also lies the danger that its price will be ideological cooptation. By giving tribute to those who chose to acquiesce to the injustice and neglecting those who protested it, Congress has indicated the price of its beneficence. But, the lesson of redress must be that only through the resistance to injustice at the moment it occurs, will a tragedy like internment be avoided in the future. Indeed, the largest tragedy will be if we continue to slouch toward a society in which power and wealth accumulate in increasingly smaller concentration. In the lacuna of time before the new millennium, it is incumbent upon all Asian Pacific Americans, particularly Japanese-Americans—indeed, all people of good will—to continue to resist attempts to impose white minority rule.

It is worth reminding ourselves constantly that while America may have been built by all its people, it still does not yet belong to all of us.

WEGLYN, *supra* note 23, at 274. See also HOHRI, *supra* note 16, at 137 ("There are a great many Japanese-Americans who tried to take the magic pill to dissolve the 'Jap-ness.'").